Supreme Court, U.S.
FILED
(3)
06-711 DEC 15 2006
OFFICE OF THE CLERK

No. ___

In The
Supreme Court of the United States

MICHAEL HANNING LORIZ,
CARA FRANCKE LORIZ
Petitioners,

v.

JOHN B. CONNAUGHTON, *et al*,
Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI AND APPENDIX

MICHAEL HANNING LORIZ
CARA FRANCKE LORIZ
11 Marc Street
PO Box 923
Shelter Island, NY 11964
(631) 749-1808
Petitioners Pro Se

QUESTIONS PRESENTED

A circuit court order holding that a private-use, physical invasion taking cannot cause irreparable harm to an absentee landowner raises questions as to whether the Fifth Amendment's post-deprivation compensation remedy rules out the availability of injunctions for victims of constitutional violations associated with a taking.

1. When do deprivations of private property rights, including the right to safely use residential property and exclude others from it, amount to irreparable injury rather than purely economic harm? Does a landowner's absentee status dictate that harm cannot be irreparable?

2. Are citizens' rights to federal court injunctions improperly restricted by courts that do not distinguish takings that violate more than the Just Compensation Clause from those that are only unconstitutional after compensation is denied pursuant to *Williamson County* and other post-deprivation precedents?

3. Are plaintiffs who seek both equitable relief and damages for interference with constitutional rights pursuant to 42 U.S.C. § 1983 — rights including but not limited to the Takings Clause — effectively barred from injunction by the just compensation guarantee?

PARTIES TO THE PROCEEDINGS

Petitioners, who are plaintiffs-appellants below, are Michael Hanning Loriz and Cara Francke Loriz, hereinafter "Loriz."

Respondents, who are defendants-appellees below, are John B. Connaughton (individually); Charles Keller, Christopher Keller, Michael Simmons (individually) and their business Ridge Wind Quail Hunts, LLC (referred to together as "Ridge Wind"); Lee Steenken, Thomas Bevington, Gary Salman, John Zboril, Walt Filpot, Alan Daniel, Michael A. Fox, Gregory V. Jolivette, Charles R. Furmon, Thomas Turner, Richard K. Jones, Anthony E. Dwyer, Robin Piper, Roger Gates, William E. Balsinger, James M. Fox (officials of Butler County, Ohio, and referred to as a group as "the County"); the Hon. Anthony Valen, the Hon. William W. Young, the Hon. Stephen W. Powell (Ohio Twelfth Appellate Court justices referred to as a group as "the Judges"); and Steven A. Gray (Chief, State of Ohio, Division of Wildlife, referred to as "the State").

RULE 29.6 DISCLOSURE STATEMENT

None of the Petitioners is a corporation.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED ..... (I)

PARTIES TO THE PROCEEDINGS ii

RULE 29.6 STATEMENT iii

TABLE OF AUTHORITIES vi

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT 1

A. Federal Claims and Injunction Proceedings.. 2

B. The Court of Appeals Order 4

REASONS FOR GRANTING THE PETITION 6

I. THE QUESTION OF WHETHER ECONOMIC RELIEF IS THE EXCLUSIVE REMEDY FOR A TAKING REMAINS UNSETTLED 8

A. Supreme Court Holdings: Injunction is Uncertain for Plaintiffs Seeking Both Equitable and Economic Relief for a Taking 10

B. Circuit Court Conflicts: *Williamson County* and the Just Compensation Guarantee Create a Baffling Hurdle for Uncompensable Harm 12

1. Circuit rulings granting injunction 12

2. Circuit rulings denying injunction 13

TABLE OF CONTENTS-cont.

Page

II. WHEN DOES A TAKING CAUSE IRREPARABLE HARM? 14

A. When Does a Denial of Due Process Constitute Irreparable Harm? 16

B. When Does a Violation of the Public Use Clause Constitute Irreparable Harm? 19

C. Does it Matter that Property is Physically Invaded without Notice? 20

D. Does it Matter that Property is a Family's Home? 23

E. Does it Matter that the Home is Vacated? 24

F. Does it Matter that Multiple Claims are Raised under § 1983? 25

III. WHY THE INJUNCTION DENIAL IS WRONG 25

A. Petitioners Loss of Due Process Guarantees is Irreparable 26

B. This Taking is not Authorized by Law 27

C. § 1983 is Relevant 28

CONCLUSION 30

APPENDIX ..... ia

TABLE OF AUTHORITIES

Cases **Page(s)**

Amoco Prod. Co. v. Village of Gambell, 480 U.S. 531 (1987) 15

Atlantic Seaboard Corp. v. Van Serkenberg, 318 F. 2d 455 (1963) 20

Babbit v. Youpee, 519 U.S. 234 (1993) 11

Bragg v. Weaver, 251 U.S. 57 (1919) 27

Brown v. Legal Foundation of Wash., 538 U.S. 216 (2003) 8

Brown v. Swann, 10 Pet. 497, 503 9

Cary v. Piphus, 435 U.S. 247 (1978) 17

Cincinnati v. Vester, 281 U.S. 489 (1930) 18

Coles v. Granville, 448 F.3d 853 (2006) 22, 26

Covington Court, Ltd. v. Village of Oak Brook, 77 F.3d 177 (7th Cir. 1996) 19

Daniel v. County of Santa Barbara, 288 F. 3d 375 (9th Cir. 2002) 13, 21

Daniels v. Area Plan Commission of Allen County, 306 F. 3d 445 (7th Cir. 2002) 14

Dolan v. City of Tigard, 512 U.S. 374 (1994) 20

Dominion Video Satellite Inc., v. Echo Star Satellite Corp, 269 F. 3d 1149, 1156 (10th Cir. 2001) 13

Duke Power Co. v. Carolina Environ'l Study Group, Inc. 438 U.S. 59 (1978) 10

Eastern Enter. V. Apfel, 524 U.S. 498 (1998) 11, 12

Elrod v. Burns, 427 U.S. 347 (1976) 16, 29

TABLE OF AUTHORITIES-cont.

Cases **Page(s)**

Fuentes v. Shevin, 407 U.S. 67 (1972) 24

Gordon v. Norton, 322 F.3d 1213, (10th Cir. 2003) 14

Greene v. Lindsey, 456 U.S. 444 (1982) 24

Greenfield Mills Inc. v. Macklin,
361 F.3d 934 (7th Cir. 2004) 14, 17, 21

Hynes v. Grimes Packing Company,
337 U.S. 86 (1949)..... 15

Kallstrom v. City of Columbus,
136 F.3d 1055 (6th Cir. 1998)..... 29

Kelo v. New London, 545 U.S. 469 (2005)..... 15, 19

Kruse v. Village of Chagrin Falls,
74 F. 3d 694 (6th Cir. 1996) 22

Lingle v. Chevron U.S.A., Inc.,
544 U.S. 528 (2005) 7, 17, 18-20, 28

Loretto v. Teleprompter Manhattan CATV Corp.,
458 U.S. 419 (1982) 22, 24

Lucas v. S.C. Coastal Council,
505 U.S. 1003 (1992)..... 22

Mathews v. Eldridge, 424 U.S. 319 (1976) 17

Merrimack River Sav's Bank v. City of Clay Center,
219 U.S. 527 (1911) 9

Monterey v. Del Monte Dunes,
526 U.S. 687 (1999)..... 9, 25

Montgomery v. Carter County,
266 F. 3d 758 (6th Cir. 2000) 4, 19, 28

TABLE OF AUTHORITIES-cont.

Cases **Page(s)**

N.Y. Co[illegible]l P'ship, Inc. v. United States DOI,
341 F.3d 112 (2003) 12

Newsom v. Norris, 888 F.2d 371 (6th Circuit 1989) ... 29

Palazzolo v. Rhode Island, 533 U.S. 606 (2001) 21

Parrat v. Taylor, 451 U.S. 527 (1981) 16

Pascoag Reservoir & Dam, LLC v. Rhode Island,
337 F. 3d 87 (1st Cir. 2003) 21

Payton v. New York, 445 U.S. 573 (1980) 23

Pharm. Care Mgmt. Ass'n v. Rowe,
429 F.3d 294 (1st Cir. 2005) 12

Phillip Morris v. Reilly, 312 F. 3d 24 (1st Cir. 2002) . 12

Pierce v. Society of Sisters, 268 U.S. 510 (1925) 9

Porter v. Warner Holding Co., 328 U.S. 395 (1946)... 9

Presley v. City of Charlottesville,
4th Cir. 2006 U.S. App. LEXIS 24048 19

Pumpelly v. Green Bay Co., 13 Wall 166 (1872) 6, 15

Ramirez de Arellano v. Weinberger,
745 F. 2d 1500, (D.C. Cir. 1984) 14

Reetz v. Michigan, 188 U.S. 505 (1903) 27

Ruckelshaus v. Monsanto Co.,
467 U.S. 986 (1984) 10, 11, 12

Sampson v. Murray,
415 U.S. 61 (1974) 5, 6, 7, 15, 16, 25, 26

Schneider v. Cal. Dep't of Corr.,
345 F. 3d 716 (2003) 13

TABLE OF AUTHORITIES-cont.

Cases	Page(s)
Soldal v. Cook County, 506 U.S. 56 (1992)	30
Southwest Williamson County v. Slater, 243 F.3d 270 (6th Cir. 2001)	15
Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302 (2002)	21, 23
Transohio Sav. Bank v. Director, Office of Thrift Supervision, 967 F.2d 598 (D.C. Cir. 1992)	13
U.S. v. James Daniel Good Real Property, 510 U.S. 43 (1993)	8, 17, 23
U.S. v. Lynah, 188 U.S. 445 (1904)	16
U.S. v. General Motors Corp., 323 U.S. 373 (1945)	24
U.S. v. Miami Univ., 294 F.3d 797 (6th Cir. 2002)	13
U.S. v. Pewee Coal Co., 341 U.S. 114 (1951)	23
Virginia Petroleum Jobbers Assn. v. FPC, 104 U. S. App. D. C. 106 (1958)	15
Warren v. City of Athens, 411 F.3d 697 (6th Cir. 2005)	18
Washington Legal Found. v. Tex. Equal Access to Justice Found., 270 F.3d 180 (5th Cir. 2001)	11, 12
Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 164 (1980)	11
Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982)	9

TABLE OF AUTHORITIES-cont.

Cases **Page(s)**

Williamson County Reg'l Planning Comm's v. Hamilton Bank,
473 U.S. 172 (1985) 4, 6, 8, 11-13, 15-23, 26

Yee v. City of Escondido, 503 U.S. 519 (1992) 13

Constitutional and Statutory Provisions

U.S. Const. amend. I 1, 3, 16, 29

U.S. Const. amend. V .....(I), 1, 6, 8, 14, 18

U.S. Const. amend. XIV 1

42 U.S.C. § 1983 .....(I), 1, 3, 4, 9, 13, 25, 28, 29

Ohio Revised Code Chapter 163 27
Ohio Revised Code 307.08 27
Ohio Revised Code 929.05 27
Ohio Revised Code 2923.16.2 28

OPINIONS BELOW

The ruling of the Sixth Circuit Court of Appeals for which review is sought is its unreported order of August 18, 2006, Case No. 06-3427. Appendix, p. 2a-3a. The original district court opinion is unreported and presented in pertinent part. App. 4a-24a.

JURISDICTION

The ruling of the Sixth Circuit was entered on August 18, 2006. A motion for reconsideration filed by the Petitioners was denied on October 10, 2006. App. 1a. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1) for a court of appeals ruling made before rendition of judgment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Petitioners raise questions as to rights protected by the United States Constitution under the Fifth, the Fourteenth, and the First amendments. App. 46a. Petitioners also invoke 42 U.S.C. § 1983 (App. 47a) for interference with these rights.

STATEMENT

This case demonstrates the need for clear standards distinguishing unconstitutional takings that cause irreparable harm and thereby justify injunction

prior to trial from those that are wholly remedied by post-deprivation compensation.

Petitioners Mike and Cara Loriz have sought injunction against illegal commercial shooting activities that result in acknowledged lead shot trespass into their property in Butler County, Ohio. In 1995, Loriz purchased a 45-acre agricultural/residential property and personally built a country home and outbuildings. Loriz reforested much of the property under a stewardship program administered by the State of Ohio.

Five years later, large-scale shooting events ensued adjacent to the Loriz residence on the property of Charles and Christopher Keller. Up to 1,000 rounds of 12-guage shotgun projectiles were fired in a day, as close as 300 feet from the Loriz house with no restrictions on shot direction. The family could not exit the house without fear of injury by lead projectile.

Shooting continues to this day and is authorized by the State of Ohio Division of Wildlife, through various licenses and permits, and by Butler County, Ohio, through a conditional commercial recreation permit granted by the County Board of Zoning Appeals. None of the licenses or permits regulate the Loriz property in any way. After administrative appeals of the County permit failed (the State provides no notice and no administrative appeal for the shooting range licenses it grants), the Loriz family vacated the property and fled to a family rental home in New York. They still pay taxes on the Ohio property, insure it and are required by law to maintain the fence-line between their property and the shooting range.

A. Federal Claims and Injunction Proceedings

State-authorized shooting creates claims of a physical taking of the Loriz property for private use,

threats to their bodily integrity and endangerment to anyone entering the shotfall zone, which extends into a public road. Loriz has been denied protection of criminal statutes that prohibit such shooting by a conspiracy to obstruct, both in practice and prospectively, enforcement of these laws by the same County government that authorizes the commercial shooting. Shooting operations were expanded twice in violation of the Petitioners' First Amendment rights. Lead shot fired into the Petitioners' property contaminates it and enters creeks that recharge the Great Miami Aquifer, Cincinnati's drinking water supply.

Loriz filed a §1983 suit in the Eastern District of New York in 2004 after fleeing the physical invasion of the Ohio residence. Loriz re-filed in the U.S. District Court for the Southern District of Ohio after the New York case was dismissed for improper venue in 2005.

The district court had jurisdiction over Loriz claims pursuant to 42 U.S.C. §1983 and 28 U.S.C. §1331 and §1332; Loriz later invoked 28 U.S.C. §1367 for jurisdiction of lesser claims.

After dismissal and summary judgment motions were filed by several defendants, Loriz filed a motion for preliminary injunction in the district court. *Contra* memoranda from government defendants specified that they did not oppose enjoining the private shooting operations. Ridge Wind Defendants opposed injunction but offered no evidence to show they would be harmed by it. The County asked for an extension of time to respond. They did not reply before Magistrate Judge Timothy S. Black issued his Reports and Recommendations (R&Rs) to dismiss. The magistrate found that conditions imposed on commercial shooting "are wholly insufficient to protect the Plaintiffs and their property" (App. 8a), but dismissed what he identified as regulatory takings and ancillary claims without prejudice as unripe pursuant to

Williamson County Reg'l Planning Comm's v. Hamilton Bank, 473 U.S. 172, 186 (1985). Loriz objected to the R&Rs in their entirety, particularly the magistrate's recommendation to consider a pending and substantively unopposed injunction motion as moot.

The §1983 suit was dismissed in district court by final order of the Honorable Sandra S. Beckwith (App. 4a) to adopt the R&Rs as "entirely correct." The order did not address the outstanding injunction motion but functioned to dispose of it.

B. The Court of Appeals Order

The notice of appeal was filed in the U.S. Court of Appeals for the Sixth Circuit, which has jurisdiction pursuant to 28 U.S.C. §1291. Briefing is complete and oral argument, requested by all parties, has yet to be scheduled.

Shortly after filing the Sixth Circuit appeal, the Petitioners filed a motion for injunction pending appeal in the district court, which did not respond. The Petitioners filed a similar motion with the Sixth Circuit before the appellate briefing was complete.

A panel of three circuit judges issued a ruling (App. 2a) denying injunction, finding:

> Loriz has a likelihood of success on appeal. The court must ultimately decide whether this case is more analogous to *Williamson County Reg'l Planning Comm's v. Hamilton Bank*, 473 U.S. 172, 186 (1985), or *Montgomery v. Carter County*, 266 F. 3d 758, 766-768 (6th Cir. 2000). Loriz has not, however, shown irreparable harm. Loriz made the laudable decision to move the family away from the danger

> posed by a stray hunter's bullet.[1] Having moved the family away, Loriz now faces economic harm. Mere economic damages, however, do not constitute irreparable harm. *Sampson v. Murray*, 415 U.S. 61, 90 (1974). Therefore the motion for an injunction pending appeal lacks merit." App. 2a-3a.

The order went on: "The court notes that the responses of counsel in this case were distinctly deficient." Only Ridge Wind and the County responded; the State, which authorizes all shooting adjacent to the Loriz home, and the Judges did not oppose the injunction. The responses provided no facts or affidavits and merely asserted in two paragraphs or less that Loriz was not likely to succeed.

Loriz moved the appellate court to reconsider the order. Again only the County and the Ridge Wind Defendants responded, arguing that Petitioners could avoid irreparable harm by maintaining their property after shooting range business hours (i.e., chainsaw brush along 2500 feet of fence after dark) or by asking their neighbor to cease shooting operations for a while. The Sixth Circuit denied the Loriz reconsideration motion as "not well taken." App. 1a.

Petitioners now raise important questions as to the availability of injunctions to takings plaintiffs who demonstrate a likelihood of success on the merits of their federal claims. This petition need not delay a circuit court ruling on the merits of the case below as the merits are presumed likely to succeed and not in question here. Rather than seeking an interlocutory appeal of the injunction denial, Petitioners challenge the order as untenable on its face. Therefore, this case allows the

---

[1] Most of the projectiles are not bullets but lead shot fired from 12-guage shotguns. Shooters are sportsmen (not traditional hunters) paying to shoot at cage-raised quail placed in a field prior to shooting activities.

Court to focus on the irreparable harm and injunction issue with minimal review of the controversy below: because the defendants provided no competing harm issues requiring a balancing test the injunction denial rests exclusively on whether a takings plaintiff can suffer irreparable harm.

Although well-focused, this case raises questions of constitutional import that potentially impact all private property owners. In takings cases, harm is directly tied to the just compensation guarantee, which, through precedents like *Williamson County*, is invoked to deny injunction and dismiss takings plaintiffs to state court, often without consideration for violations of more than the Just Compensation Clause of the Fifth Amendment.

If property owners, forced to flee their home to avoid the personal threat of illegal, state-sanctioned shotgun fire, are barred from injunction pursuant to *Sampson v. Murray, supra,* then can any citizen secure an injunction against improper takings? Is this bar consistent with fundamental common law rights, Supreme Court precedent and decisions of other circuits? Is this order representative of a greater problem — that federal courts are failing to recognize takings that violate something more than the Just Compensation Clause of the Constitution?

REASONS FOR GRANTING THE WRIT

This Court has long held that some governmental takings are unconstitutional, no matter what, when or how compensation is made. Such takings can "inflict irreparable and permanent injury" in the early words of this Court. *Pumpelly v. Green Bay Co.*, 13 Wall. 166, 177-178 (1872). Yet the predominance of a post-deprivation compensation remedy in recent takings

cases, guaranteed through the Just Compensation Clause, has made injunction and other federal court remedies largely unavailable to victims of unconstitutional takings who also seek damages.

In practice, state governments may deprive citizens of property with no due process if the deprivation is construed as a taking for which compensation is guaranteed. Consideration of uncompensable damage is noticeably absent from federal court rulings that dismiss claims to state court or deny injunction based on compensation guarantees. The resulting body of case law is plagued with conflict and uncertainty for takings victims seeking both economic and equitable relief.

The result is seen in the instant case. A circuit court has found that a physical invasion taking for a purely private use — commercial, state-licensed shooting operations that violate criminal firearms statutes — is wholly compensable and causes no irreparable constitutional violation despite the court's recognition that the taking endangered the Petitioners and their children.

The decision below finds no support in this Court and other circuits for equating the purely economic deprivation of a paycheck in *Sampson v. Murray, supra,* to a dangerous physical invasion of residential property that degrades the entire bundle of property rights. As such, review of this case may address the question of whether privacy and security interests in using residential property can be irreparably harmed.

Review of this case will allow the court to clarify its suggestion in *Lingle v. Chevron U.S.A., Inc.* 544 U.S. 528 (2005) that due process questions as to the authority of government to appropriate property should logically come prior to a just compensation determination. Federal courts have denied injunction and dismissed due process claims related to takings by invoking *Williamson County,* regardless of whether the taking

liamson County, regardless of whether the taking was regulatory or *per se*. This intertwining of all Fifth Amendment guarantees into the Just Compensation Clause, which only recognizes economic harm, may need untangling.

Review of this case will also allow the court to reconcile two property precedents: convicted drug offenders are entitled to pre-deprivation due process in the form of notice and hearing prior to seizure of real property pursuant to *U.S. v. James Daniel Good Real Property*, 510 U.S. 43 (1993) but law-abiding citizens are entitled to no process other than state compensation remedies if the deprivation is ostensibly a taking pursuant to *Williamson County*, even if it is an unannounced, illegal physical invasion of a home.

Finally, the order below may have the disturbing practical effect of creating an exemption to injunction for defendants who act so egregiously that they force takings victims to flee their homes for fear of bodily injury. On its face, the challenged order holds that a family who is shot off their own property is not entitled to injunction. This veers sharply from fundamental laws of equity and warrants the exercise of this Court's supervisory powers.

I. THE QUESTION OF WHETHER ECONOMIC COMPENSATION IS THE EXCLUSIVE REMEDY FOR A TAKING REMAINS UNSETTLED

This Court was asked to address the issue of whether equitable relief is unavailable as a matter of law to takings plaintiffs in the IOLTA interest case *Brown v. Legal Foundation of Wash.*, 538 U.S. 216 (2003). The Court found that no taking occurred and "it is therefore unnecessary to discuss the remedial question presented in the certiorari petition." *Ibid*, at 239. The question remains unsettled.

The federal courts are courts of law *and* equity.

> [T]he comprehensiveness of this equitable jurisdiction is not to be denied or limited .... Unless a statute ... restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied. "The great principles of equity, securing complete justice, should not be yielded to light inferences, or doubtful construction." *Brown* v. *Swann*, 10 Pet. 497, 503.

in *Weinberger v. Romero-Barcelo,* 456 U.S. 305, at 313 (1982) quoting *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946).

Federal court injunction denials based on a statutory bar are few; a First Circuit injunction denial on statutory grounds was reversed by this Court in *Weinberger v. Romero-Barcelo, Ibid.* To the contrary, the statute under which many takings claims are brought, 42 U.S.C. § 1983, "creates a duty to refrain from interference with the federal rights of others, and provides money damages and injunctive relief for violation of that duty" as stated by Justice Scalia, in his concurrence on *Monterey v. Del Monte Dunes*, 526 U.S. 687, 723 (1999). Consideration of § 1983 is noticeably absent from circuit court rulings denying injunction for takings.

This Court agreed long ago that "prevention of impending injury by unlawful action is a well recognized function of courts of equity." *Pierce v. Society of Sisters*, 268 U.S. 510, 536 (1925). And that "[t]he right of a citizen to the protection of property from destruction by violence should be, and is, zealously guarded by the courts." *Merrimack River Savings Bank v. City of Clay Center,* 219 U.S. 527, 528 (1911). Yet when unlawful action is construed as a taking, as in the instant case, this "well recognized" function is no longer "zealously guarded."

Today, the post-deprivation economic remedy embodied in the Just Compensation Clause so dominates takings law that plaintiffs' cries of irreparable injury go unheard.

A. Supreme Court Holdings: Injunction is Uncertain for Plaintiffs Seeking Both Equitable and Economic Relief for a Taking

"Equitable relief is not available to enjoin an alleged taking of private property for a public use, duly authorized by law, when a suit for compensation can be brought against the sovereign subsequent to the taking." *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984) at 1016. *Monsanto* established what has been interpreted as a federal anti-injunction rule for takings guaranteed under the Tucker Act. It's applicability to local and state takings claims has been questioned but enforced in circuit court decisions, albeit inconsistently.

Prior to *Monsanto*, the Supreme Court in *Duke Power Co. v. Carolina Environmental Study Group, Inc.* 438 U.S. 59 (1978) addressed the issue of equitable relief for federal government takings by holding that the Declaratory Judgment Act "allows individuals threatened with a taking to seek declaration of the constitutionality of the disputed governmental action before potentially uncompensable damages are sustained." *Ibid* at 71.

One case holds that a taking cannot be enjoined, the other that federal courts should enjoin before unconstitutional action causes irreparable harm. The difference between the two is readily apparent but it is an inquiry district courts fail to pursue in their haste to dismiss takings cases to state court — when is a taking unlawful or in violation of more than the Just Compensation Clause and likely to cause uncompensable harm?

This inquiry is crucial. However, it is not embodied in an authoritative test and therefore is ignored and instead ripeness is the first inquiry for federal plaintiffs raising takings claims (as in the district court ruling below). Even when a takings claim is likely to succeed in federal court (as acknowledged in the challenged order), injunction is unavailable due to the premise that damage from even an unconstitutional taking is inherently and wholly compensable.

Supreme Court cases consistently authorize injunctions for facial challenges, as affirmed by *Babbit v. Youpee*, 519 U.S. 234, 242-43 (1993). Those holding that takings can be enjoined rely on this case, as did the Fifth Circuit: "*Babbit* lends support to the conclusion that *Monsanto* and *Williamson County* do not categorically prohibit such relief for takings claims..." *Washington Legal Found. v. Tex. Equal Access to Justice Found.* 270 F.3d 180 (5th Cir. 2001).

In *Webb's Fabulous Pharmacies, Inc. v. Beckwith,* 449 U.S. 155, 164 (1980), the Court found a Florida law unconstitutional and granted equitable relief. In *Eastern Enter. v. Apfel*, 524 U.S. 498 (1998), a challenge of the Coal Industry Retiree Health Benefit Act, the plurality concluded that the district court had equitable jurisdiction because a Tucker Act proceeding would be futile; therefore, "the declaratory judgment and injunction sought ... constitute an appropriate remedy under the circumstances." *Ibid* at 522.

Supreme Court law is internally consistent, although its application by the circuit courts is not. Equitable relief is available to takings plaintiffs challenging the constitutionality of an action or ordinance affecting a taking. But the question of whether a plaintiff seeking both equitable and economic relief can secure an injunction is not resolved by these cases.

B. Circuit Court Conflicts: *Williamson County* and the Just Compensation Guarantee Create a Baffling Hurdle for Uncompensable Harm

In circuit courts, the *Williamson County* ripeness test is invoked not only to dismiss claims for compensation, but also to deny injunctions on the basis that an unripe taking cannot be enjoined. *Pharm. Care Mgmt. Ass'n v. Rowe,* 429 F.3d 294 (1st Cir. 2005) ("Typically, no injunctive relief claim based on taking would be ripe until state compensation remedies were exhausted" at n11).

This is both ironic and troubling. If an injunction is needed to prevent *uncompensable* damage how could such relief be considered unripe for *lack of compensation*? Clearly, something is amiss.

Despite the anti-injunction precedents embodied in *Monsanto* and *Williamson County*, the availability of equitable relief varies from circuit to circuit, indicating no clear rule for injunction in takings cases.

1. Circuit Rulings Granting Injunction

The First Circuit granted an injunction in a taking case, holding that the *Monsanto* rule was waived by the appellants in *Phillip Morris v. Reilly*, 312 F. 3d 24 (1st Cir. 2002). The Second Circuit in *N.Y. Coastal P'ship, Inc. v. United States DOI*, 341 F.3d 112 (2003) entertained the argument that if a remedy at law is inadequate, an equitable remedy can be sought (dismissed for lack of standing).

A loosely related category of takings injunctions can be seen in circuit court cases based on the adequacy of post-deprivation remedies to justly compensate takings victims. These cases rely to varying degrees on the practicality standard of *Eastern Enter., supra: Washington Legal Found. v. Texas Equal Access to Justice Foundation, supra* (5th Cir. 2001) (injunction "substantively

viable" if "there is no mechanism for payment of just compensation"); *United States v. Miami Univ.*, 294 F.3d 797 (6th Cir. 2002) at 819 (harm is not fully compensable if damages are complex); see also *Dominion Video Satellite Inc., v. Echo Star Satellite Corp*, 269 F. 3d 1149, 1156 (10th Cir. 2001); *Transohio Sav. Bank v. Director, Office of Thrift Supervision*, 967 F.2d 598, 613 (D.C. Cir. 1992) ("the district court should accept jurisdiction over takings claims for injunctive relief in the few cases where a Claims Court remedy is 'so inadequate that the plaintiff would not be justly compensated'" (citation omitted).)

The Ninth Circuit in *Schneider v. Cal. Dep't of Corr.*, 345 F. 3d 716 (2003) vacated and remanded inmates' takings claims for damages and injunctive relief under § 1983 to determine if withheld interest on an inmate trust account amounted to a taking.

2. Circuit Rulings Denying Injunction

But the Ninth Circuit in a real property case, *Daniel v. County of Santa Barbara*, 288 F. 3d 375 (9th Cir. 2002), denied injunction holding that "[D]amages, in the form of just compensation, are the normal remedy for a takings claim ... Indeed, it is the very essence of an ordinary takings claim that the property owner cannot prevent the governmental body from regulating or seizing the property, provided that just compensation is paid."

The Ninth relied on *Williamson County* in denying injunction but went on to cite an exception for facial challenges in *Yee v. City of Escondido*, 503 U.S. 519 (1992). If "the property owner's argument is that the municipality has no authority to adopt the ordinance" then "payment of compensation... cannot confer an authority that is otherwise lacking." *Daniel v. Santa Barbara, supra.* The premise that the legitimacy of a taking is an *exception* to *Williamson County*, as indicated

by the Ninth Circuit, rather than a *first-impression inquiry* is at the heart of this petition.

In *Greenfield Mills Inc. v. Macklin,* 361 F.3d 934 (7th Cir. 2004), a damaged plaintiff was denied injunction on the basis that only plaintiffs seeking "exclusively equitable relief" are entitled to injunction. *Daniels v. Area Plan Commission of Allen County,* 306 F. 3d 445 (7th Cir. 2002).

According to some circuits, an unlawful taking entitles a plaintiff to equitable relief and federal jurisdiction in theory but not in affirmative action. *Gordon v. Norton,* 322 F.3d 1213 (10th Cir. 2003) dismissed because the lawfulness of the action was not at issue; *Ramirez de Arellano v. Weinberger,* 745 F. 2d 1500 (D.C. Cir. 1984), vacated on other grounds.

Neither Supreme Court law nor circuit rulings definitively establish when injunction is available to takings plaintiffs seeking both equitable and economic relief. Even a meritorious claim that takings are improper will not entitle plaintiffs to equitable relief as demonstrated in the order challenged here.

II. WHEN DOES A TAKING CAUSE IRREPARABLE HARM?

While federal case law indicates that takings plaintiffs have the right to request pre-trial injunction, they are plagued by the same principles that attempt to bar injunction as a general remedy — that the availability of compensation proscribes injunction by establishing that all harm is ultimately compensable rather than irreparable. This premise assumes that the only Fifth Amendment guarantee at risk from a governmental taking is the Just Compensation Clause. If only economic harm can ensue from a taking, then the Due Process Clause has indeed been swallowed whole by just com-

pensation. And as demonstrated in the instant case and this Court's divided decision in *Kelo v. New London,* 545 U.S. 469 (2005), the Public Use Clause may rarely rise above its counterpart in just compensation.

For a pre-trial injunction motion to prevail it must demonstrate a likely meritorious constitutional claim and show that the movant will suffer irreparable harm. *Southwest Williamson County v. Slater.* 243 F.3d 270, 277 (6th Cir. 2001). Or as this Court states: "The bases for injunctive relief are irreparable injury and inadequacy of legal remedies." *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 541 (1987).

Circuit courts appear to be operating under the premise that so long as a just compensation remedy is available, all harm from a property deprivation is purely economic. This is difficult to reconcile with precedent that physical invasion takings can "inflict irreparable and permanent injury," *Pumpelly v. Green Bay Co.*(1872), *supra*, and that injunction may be necessary to protect property rights, *Hynes v. Grimes Packing Company,* 337 U.S. 86, 98 (1949).

In the case below, the Sixth Circuit relied on *Sampson v. Murray*, to deny injunction for a lack of irreparable harm:

> The key word in this consideration is *irreparable*. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm. *Virginia Petroleum Jobbers Assn. v. FPC*, 104 U. S. App. D. C. 106 (1958).

Id. at 90. Relief for a withheld paycheck was guaranteed to the plaintiff in *Sampson* by the Back Pay Act.

The Sixth Circuit's reliance on *Sampson* suggests that the forced eviction of a family is somehow reparable.

Logically, in order for a taking to cause irreparable harm, it must violate a constitutional guarantee other than just compensation. For some constitutional violations, a likelihood of success on the merits dictates irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (establishing that a First Amendment deprivation was categorically irreparable). When other constitutional deprivations, such as denial of the Due Process or the Public Use clauses, categorically constitute irreparable harm is unclear. However, in *U.S. v. Lynah*, 188 U.S. 445, 479 (1904), this Court held: "[I]f property were seized or taken by officers of the government without authority of law ... there could be no recovery..." That is, an unauthorized taking cannot be compensated and is irreparable.

Most recent takings cases have turned on the availability of a compensation remedy. A test for when a taking degrades other constitutional guarantees and causes irreparable harm is wanting.

A. When Does a Denial of Due Process Constitute Irreparable Harm?

The challenged order inherently recognized a threat to the Petitioners' life and liberty but still considered all harm to be economic. This is difficult to square with the Due Process Clause.

Parrat v. Taylor, 451 U.S. 527 (1981), holds that random, unauthorized acts by state officers require no pre-deprivation due process. This principle, despite its basis in random action, was incorporated into *Williamson County* to hold that until state compensation is sought, no process is due a deprived property owner. As a result, due process has been bundled into the *William-*

son County ripeness test. The result: federal courts need not inquire into due process injuries associated with a taking.

But this Court suggested that due process inquiries should logically come before questions of deprivation and compensation in *Lingle*, *supra*. The authority of a government action affecting a taking should be questioned first and if it violates due process "that is the end of the inquiry. No amount of compensation can authorize such action." *Ibid*. If no amount of *compensation* can authorize the action, the deprivation is logically *uncompensable* and therefore subject to injunction.

The standard for determining what process is constitutionally due was established in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976): the process due must come "at a meaningful time and in a meaningful manner." *Ibid* at 333. "Our precedents establish the general rule that individuals must receive notice and be heard before the Government deprives them of property." *U.S. v. James Good Real Property*, 510 U.S. at 47. In that case, this Court held that criminals, unlike law-abiding takings victims, are entitled to notice and a meaningful hearing before their residential property is seized.

"Procedural due process rules are meant to protect persons not from deprivation but from the mistaken or unjustified deprivation of life, liberty, or property." *Cary v. Piphus*, 435 U.S. 247, 266 (1978). But with no inquiry into the justification for a taking prior to compensation considerations, due process is pre-empted. As this Court stated, "the availability of a postseizure hearing may be no recompense for losses caused by erroneous seizure." *U.S. v. James Daniel Good* at 55. The same could be said of a state-controlled compensation hearing for an unjustifiable taking.

A case in point is presented in *Greenfield Mills Inc. v. Macklin, supra* (7th Cir. 2004). Plaintiffs sought dam-

ages and injunctive relief for due process and takings violations associated with an inverse physical invasion. After dismissing the takings claim for lack of ripeness, the court dismissed the plaintiffs' due process claims, holding that "the *Williamson County* exhaustion requirement applies with full force to due process claims (both procedural and substantive) when based on the same facts" that create the taking. In short, *Williamson County* pre-empted any due process analysis.

Due process may require more than compensation. "To the end that the taking shall be shown to be within its authority," this court stated in *Cincinnati v. Vester*, 281 U.S. 489, 448 (1930) the government body "is called upon to specify definitely the purpose of the appropriation." When, as in the instant case, the government officials neither recognize the taking nor justify it after years of deprivation, due process is implicated.

The Sixth Circuit's decision in *Warren v. City of Athens,* 411 F.3d 697 (6th Cir. 2005) held that government actions to impede the use of property without a hearing substantiated a violation of procedural due process that met the irreparable harm standard for permanent injunction. But that ruling flowed from the fact that the plaintiff's Fifth Amendment claims did not seek just compensation.

The circuit courts appear in need of a due process standard to apply when a victim of an unjustified taking (i.e., one that is effected by official policy but is unauthorized or unconstitutional) seeks remedies in both law and equity. As indicated by *Lingle*, such an unauthorized physical invasion taking would inherently cause an irreparable violation of the Due Process Clause regardless of whether post-deprivation compensation is paid.

B. When Does a Violation of the Public Use Clause Constitute Irreparable Harm?

Lingle also indicates that government action that fails to meet the "public use" requirement is impermissible, regardless of compensation. The line between a public and private use is blurred after this Court's decision in *Kelo*. Nonetheless, in his concurrence in that case, Justice Kennedy stated that "transfers intended to confer benefits on particular, favored private entities, and with only incidental or pretextual public benefits are forbidden by the Public Use Clause." Such is the case here, as indicated by the Sixth Circuit's acknowledgement that a private-use takings claim is likely to succeed.

Recently, the Fourth Circuit, in *Presley v. City of Charlottesville*, 2006 U.S. App. LEXIS 24048 [*24], stated as a matter of fact that the constitution requires that "the government must demonstrate that the taking was for a public use." But when must a government demonstrate this? The idea that compensation can come after deprivation is established, but circuit rulings imply that the government has no obligation to honor the Public Use Clause prior to an inverse physical invasion.

Lingle suggests that violations of the Public Use Clause categorically cause irreparable harm. Even the Sixth Circuit standard for private-use takings, *Montgomery v. Carter County*, cited in the order below but largely ignored, holds that such a taking demands more than just compensation and must desist. *Ibid* 766-768. But another circuit court ruling, relying on *Williamson County*, indicates that even a challenge to the Public Use Clause is not ripe until a state compensation remedy is sought. *Covington Court, Ltd. V. Village of Oak Brook*, 77 F.3d 177, 179 (7th Cir. 1996)(concluding that a plaintiff who contends taking was improper because it was done for a private purpose must exhaust state

remedies before bringing suit in federal court).

If *Williamson County* is allowed to drain the Public Use Clause of any constitutional protections independent of compensation, as it has in the Seventh Circuit, injunction against this constitutional violation will be barred in federal court.

C. Does it Matter that Property is Physically Invaded without Notice?

This Court has also held that "[A] permanent physical invasion, however minimal the economic cost it entails, eviscerates the owner's right to exclude others from entering and using her property — perhaps the most fundamental of all property interests." See *Dolan v. City of Tigard*, 512 U.S. 374, 384 (1994) and others in *Lingle v. Chevron U.S.A., Inc.*, *supra*.

The clear implication is that the loss of the right to exclude others is a property, liberty and security deprivation independent of economic costs; i.e., an uncompensable injury. According to the Fourth Circuit, a condemnor is entitled to take possession and enjoy his property, even prior to adjudicating the appeal of a condemnation. *Atlantic Seaboard Corp. v. Van Serkenberg*, 318 F. 2d 455 (1963), held that "to postpone the condemnor's enjoyment of the premises" would impose "upon the condemnor great, perhaps irreparable damage." Yet circuit courts do not recognize irreparable damage to the legal owners of property, denied all use and enjoyment by inverse physical invasion, until just compensation is sought. This seems inequitable.

This Court distinguishes permanent physical invasion takings from all others, particularly temporary, regulatory takings like that in *Williamson County*. A regulatory taking "does not give the government any right to use the property nor does it dispossess the

owner or affect her right to exclude others." *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 122 S.Ct. 1465, 1479 (2002). That Court held "it is not appropriate to treat cases involving physical takings as controlling precedents for the evaluation that there has been a 'regulatory taking' and vice versa." *Ibid.* And in *Palazzolo v. Rhode Island,* 533 U.S. 606 at 617-618 (2001), this Court held:

> Direct condemnation, by invocation of the State's power of eminent domain, presents different considerations than cases alleging a taking based on a burdensome regulation. In a direct condemnation action, or *when a State has physically invaded the property without filing suit*, the fact and extent of the taking are known. ... A challenge to the application of a land-use regulation, by contrast, does not mature until ripeness requirements have been satisfied. (emphasis added)

Despite these cautions, federal courts routinely apply the *Williamson County* ripeness test not just to temporary regulatory takings but to plaintiffs who have already been physically dispossessed of property, such as the plaintiffs in *Greenfield Mills Inc. v. Macklin,* (7th Cir., *supra*). The circuit court found that those plaintiffs suffered a physical invasion taking but were barred from federal remedy for a lack of pursuing state compensation pursuant to a *Williamson County* test, albeit a modified test for physical takings.

Other circuits have adopted similar modified ripeness tests for physical invasion takings. *Pascoag Reservoir & Dam, LLC v. Rhode Island*, 337 F. 3d 87, 91 (1st Cir. 2003); *Daniel v. County of Santa Barbara*, *supra* at 382 (9th Cir.). These tests assume the first *Williamson* prong is met — that a physical invasion is a "final" deprivation. But these physical invasion victims are forced

to exhaust state inverse condemnation remedies for an "unripe" taking that has already dispossessed them of property.

A similar doctrine is developing in the Sixth Circuit. In *Coles v. Granville*, 448 F.3d 853 (2006) the court stated that despite Ohio's lack of an inverse condemnation statute, an adequate *Williamson County* compensation remedy is available in mandamus. The court specifically distinguished a Dickensian plaintiff from 10 years earlier in *Kruse v. Village of Chagrin Falls*, 74 F.3d 694, 697 (6th Cir. 1996) and determined that even the Kruse family, which suddenly found their back yard removed by the government with no notice and an immediately declared unwillingness to pay, would now have adequate remedy by seeking condemnation proceedings through mandamus. Such a remedy may be adequate for a prospective regulatory taking, but the higher scrutiny paid *per se* physical invasions seems to require more.

"When the government physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the former owner," *United States v. Pewee Coal Co.*, 341 U.S. 114, 115 (1951). If the state has a "categorical duty to compensate," giving that state an opportunity to say, "no, we don't have to compensate" through proceedings it controls seems contradictory and provides no meaningful compensation guarantee. Such an outcome conflicts with this Court's holding where "'permanent physical occupation' of land is concerned, we have refused to allow the government to decree it anew (without compensation) no matter how weighty the 'public interest' involved." *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992) at 1028 quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982) at 426.

How can an actual physical invasion, in which the owner is already dispossessed of property, be unripe pursuant to a precedent addressing temporary, regulatory takings, which theoretically cannot dispossess the owner of property according to *Tahoe-Sierra, supra*? The Court may wish to consider whether *Williamson County* is closing too many federal court room doors.

Clear guidance on when inverse physical invasions cause irreparable harm is needed.

D. Does it Matter that the Property is a Family's Home?

In *U.S. v. James Daniel Good, supra*, this court stated an essential principle of constitutional limitations on interference with real property: "Individual freedom finds tangible expression in property rights. At stake ... are the security and privacy of the home and those who take shelter in it." If liberty interests are thus intertwined with residential property interests, unannounced physical invasions of a residential property, as in the instant case, could create liberty deprivations under the Due Process Clause.

The damage to non-economic security interests could be deemed greater for a family's home than for other property. This Court recognizes the "sanctity of the home" with regard to governmental intrusions under the Fourth Amendment. See *Payton v. New York*, 445 U.S. 573, 601 (1980). Is a home less sanctified because the government is enacting intrusions without properly invoking its policing powers by construing the intrusion as a taking? If the government authorizes acts so egregious that a property owner cannot step out his door without risk of injury, then the sanctity of that home is irreparably lost.

This Court also recognizes that continued occu-

pancy is a property interest that is protected by the Due Process Clause. *Greene v. Lindsey*, 456 U.S. 444, 450-51 (1982) (concluding that continued residency is a "significant interest in property" subject to due process protection.) If the government authorizes acts that force a family to flee their home, such an involuntary termination of occupancy would create an irreparable due process violation.

E. Does it Matter that the Home is Vacated?

When a property is taken by the government, the owner is no longer in control of the property, whether he still lives on the property or not. There is an inherent separation between the property and its rightful owner. The premise challenged here, that the Petitioner's removal of his family to avoid injury from state-sanctioned activities proscribes irreparable harm, seems illogical in this context. The order below offers no support for the premise.

The instant case presents government action that so threatened a family that it affected a *de facto* eviction of the Petitioners from the home they own. Evicted tenants must receive notice and an opportunity to be heard prior to being evicted. *Fuentes v. Shevin*, 407 U.S. 67, 81-82 (1972). Logically, an eviction without notice and a hearing (relating directly to the eviction) could be enjoined for causing an irreparable deprivation under due process.

In *Loretto*, this Court held: "Property rights in a physical thing have been described as the rights 'to possess, use and dispose of it.' *United States v. General Motors Corp.*, 323 U.S. 373, 378 (1945). To the extent that the government permanently occupies physical property, it effectively destroys *each* of these rights." *Id.* at 436-437. Plaintiffs already dispossessed of property are already irreparably harmed.

F. Does it Matter that Multiple Claims are Raised under § 1983?

The challenged order addresses only the Petitioners' takings claims. Absent from consideration here and in most circuit court injunction rulings is the authority invoked by § 1983 to vindicate multiple constitutional rights through both equitable and legal remedies.

Like the plaintiff in *Monterey v. Del Monte Dunes, supra*, Petitioners "do not seek just compensation *per se* but rather damages for the unconstitutional denial of such compensation" and many other considerable constitutional deprivations. *Id.* at 710. A § 1983 action is not an inverse condemnation suit.

When "the government not only denies liability but fails to provide an adequate remedy ... the analogy to ordinary condemnation procedures is simply untenable." *Id.* at 712.

Likewise the application of *Sampson v. Murray's* paycheck remedy to multiple constitutional violations inherent in this case fails. When viewed through the prism of § 1983, as Justice Scalia recommends (*Monterey* concurrence at 724), shifting focus from the single ray projected by a takings claim, the challenged order honors neither the Constitution nor U.S. Code.

III. WHY THE INJUNCTION DENIAL IS WRONG

The Sixth Circuit found that Petitioners face "[m]ere economic damages" because they "made the laudable decision to move the family away" from the danger of trespassing shotgun fire. This conclusion is not only incorrect, it encourages defendants to avoid injunction by acting so egregiously that they force citizens to flee their homes.

This incorrect order is driven by the premise that damage to property is purely economic and can never be irreparable.

In *Sampson*, adequate compensatory relief for a withheld paycheck was available through the Back Pay Act. The instant order assumes that "adequate compensatory or other corrective relief" is available for the Petitioners but does not say how. *Ibid.* This assumption is erroneous for a number of reasons.

A. Petitioners' Loss of Due Process Guarantees is Irreparable

The order below indicates that the Petitioners are endangered by the challenged state activity. The court characterized moving the family from the threat of a stray projectile as "laudable." This is clearly an acknowledgement of a threat to a life and liberty interest protected by the Due Process Clause. The circuit court errs, however, in holding that moving from the property somehow mitigates the liberty deprivation. A property owner, whether a resident or not, should have the right to walk on his property without fear of being shot while he holds title to the land.

By relying on *Sampson v. Murray*, the Sixth Circuit assumes Just Compensation will guarantee that damage is purely economic. This is also in error. Because Ohio has no inverse condemnation statute, due process is inherently denied to a physical invasion takings victim no matter what compensation may await. While Ohio mandamus may be an adequate remedy for a *Williamson County*-style regulatory taking (although we question the Sixth Circuit's conclusion issued in *Coles v. Granville, supra*), the notice and speedy compensation required by due process prior to a physical

invasion taking[2] cannot be satisfied by a generic mandamus statute that may or may not win a condemnation hearing. Such a lack of either notice or a guaranteed statutory remedy prior to invasion irreparably denies due process.

B. This Taking Is Not Authorized By Law

Although there is no inverse condemnation statute, Ohio law is not silent as to matters in this case. The Ohio Constitution holds that, except during exigencies and for road appropriations, "where private property shall be taken for public use, a compensation therefor shall *first* be made in money." (emphasis added.)

Ohio law also specifies the types of appropriations each local government entity can make. Neither the Butler County Board of Zoning Appeals (a non-legislative agency) nor the Chief of the Division of Wildlife are authorized to physically appropriate property. County appropriations through its commissioners are limited (by ORC 307.08) and do not include the right to take private property for commercial recreational purposes. The State of Ohio can appropriate property but only through the director of transportation, a conservancy district or a sanitary district pursuant to Chapter 163 of Ohio Revised Code.

While no statute authorizes the taking in this case, at least one statute restricts it. ORC 929.05, legislation intended to preserve agricultural land, prohibits the taking of 10 percent or 10 acres of any single agricultural property. The Petitioners' 45 acres are zoned agri-

---

[2] *Reetz v. Michigan*, 188 U.S. 505, 509 (1903) (declaring that a publicly available statute may be sufficient to provide notice); *Bragg v. Weber*, 251 U.S. 57, 58 (1919): "where adequate provision is made for certain payment of the compensation without unreasonable delay the taking does not contravene due process of law."

cultural and were actively being reforested until shot trespass damaged or destroyed the trees.

The shooting that forced "the laudable decision to move the family away from the danger posed by a stray hunter's bullet," as stated in the order, is entirely prohibited by Ohio law with equivalents in every other state. Ohio Revised Code 2923.16.2 makes knowingly shooting into the property of another a crime; the loss of this legislated protection provides the basis for the Petitioners' equal protection claims.

As stated in *Lingle, supra*, "no amount of compensation can authorize" an impermissible taking. As such this impermissible taking is uncompensable and is inherently enjoinable.

The taking is also impermissible because it violates the Public Use Clause. The ruling below found that the Petitioners are likely to succeed on their claim that their property was taken for a purely private use. This meritorious claim implies an inherent violation of the Public Use Clause. Such a violation has no guaranteed compensation, and *Montgomery, supra* (cited but otherwise ignored by the circuit court) holds that such a taking is "unconstitutional regardless of whether just compensation is paid" and must desist. A private-use taking claim that is likely to succeed substantiates irreparable harm.

C. § 1983 is Relevant

The Sixth Circuit also failed to recognize any of the Petitioners' claims other than the takings claim. The Petitioners have also been practically and prospectively denied the legislated protections of criminal firearms statutes that prohibit repeatedly and knowingly shooting into the property of another. The shooting also con-

stitutes a state-created danger. *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1062-63 (6th Cir. 1998).

Perhaps more compelling is the Petitioners' claim, documented in attachments to their complaint, that BZA member Tom Bevington demanded the removal of Mike Loriz from a public hearing at which the shooting range was expanded in blatant violation of his First Amendment rights. He was removed from the hearing by an armed deputy before being allowed to speak. "It is well recognized that it is constitutionally impermissible to terminate even a unilateral expectation of a property interest in a manner which violates rights of expression protected by the First Amendment ... Even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief." *Newsom v. Norris*, 888 F.2d 371 (6th Circuit 1989).

Because an expansion of the taking occurred in violation of the First Amendment, irreparable harm is mandated per *Elrod v. Burns*, *supra* at 373.

This Court has held, when more than one constitutional violation is asserted, "we are not in the habit of identifying as a preliminary matter the claim's 'dominant' character. Rather, we examine each constitutional provision in turn." *Soldal v. Cook County*, 506 U.S. 56, 70 (1992). The Petitioners' due process, state-created danger, freedom of speech and equal protection claims should not be relegated to serve as wallpaper for a takings claim.

The case below is not a simple inverse condemnation suit but a quintessential § 1983 case. State and county officers, conspiring with a sitting county judge (Defendant Connaughton) and his clients (Ridge Wind), seized the Petitioners property by shotgun fire, endangering the petitioners and the public and violating multiple criminal statutes and constitutional guarantees in doing so. These were not random acts: the licenses and

permits have been repeatedly re-issued with full knowledge of the damage to the Petitioners. Such damage is irreparable and warrants injunction.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Hanning Loriz
Cara Francke Loriz
Petitioners *Pro Se*
PO Box 923; 11 Marc Street
Shelter Island, NY 11964-0923

NOVEMBER 2006

TABLE OF CONTENTS

Sixth Circuit Order Denying
Motion to Reconsider 1a

Sixth Circuit Order Denying
Injunction Pending Appeal 2a

U.S. District Court, Southern District of Ohio
Order Dismissing Case 4a

Magistrate's Report and Recommendation 6a

Petitioners' original complaint[1] 25a

Constitutional Amendments 46a

Federal Statute 47a

[1] Petitioners' timely amended complaint was barred by the District Court and the motion to amend was denied with the dismissal of all claims. Attachments to the original complaint documenting claims are omitted here.

No. 06-3427

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MICHAEL HANNING LORIZ; CARA FRANCKE LORIZ	)	FILED
	)	OCT 10
	)	2006
Plaintiffs-Appellants,	)	
	)	
v.	)	ORDER
	)	
JOHN B. CONNAUGHTON, et al.,	)	
	)	
Defendants-Appellees.	)	

Before: MOORE, COLE, AND GILMAN, Circuit Judges.

Michael and Cara Loriz move for reconsideration of this court's order denying their motion for an injunction pending appeal.

Upon consideration, the court concludes that the motion is not well-taken. The motion to reconsider is denied.

ENTERED BY ORDER OF THE COURT

s\Leonard Green
Clerk

No. 06-3427

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MICHAEL HANNING LORIZ; CARA FRANCKE LORIZ	)	FILED
	)	AUG 18
	)	2006
Plaintiffs-Appellants,	)	
	)	
v.	)	ORDER
	)	
JOHN B. CONNAUGHTON, et al.,	)	
	)	
Defendants-Appellees.	)	

Before: MOORE, COLE, AND GILMAN, Circuit Judges.

Plaintiffs-appellants Michael and Cara Loriz (Loriz) move for an injunction pending appeal in this private civil rights action. 42 U.S.C. § 1983. The four factors to be considered concerning such a motion are: (1) the likelihood of success on appeal; (2) the existence of irreparable harm; (3) a lack of harm to others; and (4) whether the public interest favors injunction. See Grutter v. Bollinger, 247 F. 3d 631, 632-33 (6th Cir. 2001) (order).

Loriz has shown a likelihood of success on appeal. The court must ultimately decide whether this case is more analogous to *Williamson County Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 186 (1985), or *Montgomery v. Carter County*, 266 F. 3d 758, 766-768 (6th Cir. 2000). Loriz has not, however, shown irreparable harm. Loriz made the laudable decision to

move the family away from the danger posed by a stray hunter's bullet. Having moved the family away, Loriz now faces economic harm. Mere economic damages, however, do not constitute irreparable harm. [*p. 2] *Sampson v. Murray*, 415 U.S. 61, 90 (1974). Therefore the motion for an injunction pending appeal lacks merit.

The court notes that the responses by counsel in this case were distinctly deficient. The response from the public official defendants attempted to incorporate a district court document, a practice disfavored by the court. Counsel for the private defendants provided neither a docket sheet nor a narrative description of the current proceedings in the pending state court action between these parties. Such deficiencies are not what the court expects from counsel appearing before the Sixth Circuit. The court trusts that counsel will do a better job when filing their briefs.

The motion for an injunction pending appeal is denied.

ENTERED BY ORDER OF THE COURT

s\Leonard Green
Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Michael Hanning Loriz; *et al.*,	)	FILED
	)	FEB 24 2006
Plaintiffs,	)	
	)	
vs.	)	Case No.
	)	1:06-cv-306
John B. Connaughton, *et al.*,	)	
	)	
Defendants.	)	
	)	

Order Adopting Reports and Recommendations

On December 29, 2005, United States Magistrate Judge Timothy S. Black issued three Reports and Recommendations in this matter. He recommended that the Court grant the following motions: a motion to dismiss by Defendants Young, Valen, and Connaughton (Doc.14); a motion to dismiss by Defendants Christopher Keller, Charles Keller, Simmons, and Ridge Wind Quail Hunts, LLC (Doc. 19); and a motion for judgment on the pleadings by Defendant Gray (Doc. 25). The Magistrate Judge further recommended that the Court dismiss *sua sponte* Plaintiffs' claims against all non-moving parties and close this action. He recommended that Plaintiffs' motion to amend their complaint (Doc. 38) and their motion for supplemental jurisdiction (Doc. 44) be denied.

Plaintiffs have objected to each of the reports and recommendations. Their objections do not alter the Court's conclusion, however, considering the matters to which objections have been raised *de novo*, that the Magistrate Judge's recommendations are entirely correct. Accordingly, the Court hereby **ADOPTS** the

Reports and Recommendations and **GRANTS** the dispositive motions by Defendants (Doc. 14, Doc. 19, and Doc. 25). The Court [*p.2] further **DISMISSES** *sua sponte* Plaintiffs' claims against non-moving Defendants and **CLOSES** this action. Plaintiffs' motions to amend their complaint (Doc. 38) and for supplemental jurisdiction (Doc. 44) are hereby **DENIED**.

IT IS SO ORDERED.

/s/Sandra S. Beckwith, Chief Judge
United States District

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Michael Hanning Loriz; *et al.*,	)	FILED
	)	DEC 29 2005
Plaintiffs,	)	
	)	Case No.
vs.	)	1:06-cv-306
	)	
John B. Connaughton, *et al.*,	)	Beckwith, C.J.
	)	Black, M.J.
Defendants.	)	
	)	

REPORT AND RECOMMENDATION[2] THAT DEFENDANTS' MOTIONS TO DISMISS (Docs. 14, 19) AND FOR JUDGMENT ON THE PLEADINGS (Doc. 25) BE GRANTED; THAT ALL CLAIMS AGAINST THE NON-MOVING DEFENDANTS BE SUA SPONTE LIKEWISE DISMISSED; AND THAT THIS BE CASE CLOSED.

This civil action is before the Court on defendants' motions to dismiss and for judgment on the pleadings (docs. 14, 19, 25), and the parties' responsive memoranda (docs. 21, 22, 27, 30, 34, 41.) Plaintiffs Michael and Cara Loriz initiated this action on May 4, 2005 by filing a *pro se* complaint against 25 public and private sector individuals, alleging that the Defendants have violated the Plaintiffs' constitutional rights. (Doc. 1.)

I. BACKGROUND

In 1995, Plaintiffs purchased a 45 acre farm in Butler County, Ohio. (Doc. 1, ¶ 5.) Plaintiffs con-

[2] Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

structed a 5,000 square foot home, along with a barn and large shed on the -2- property. *Id.* Plaintiffs also established a hardwood veneer tree farm on their property and converted their basement into a professional woodworking shop. (*Id.* at ¶ 9.)

Shortly after Plaintiffs purchased the land, neighboring Defendants Charles Keller and Michael Simmons applied for a zoning variance in order to operate a commercial bird hunting operation on the lot adjacent to Plaintiffs' property. (*Id.* at ¶ 6.) Subsequently, the Ohio Division of Wildlife approved various applications by Keller and Simmons to commence operation of a hunting business, which operations opened in January 2001. (*Id.* at ¶ 11.)

According to Plaintiffs, the Butler County Zoning Department applied for temporary restraining order to halt the operation of the business in March 2001, but the petition was denied. (*Id.* at ¶ 12.)

Accordingly, in March 2001, Plaintiffs filed a civil action in the Court of Common Pleas of Butler County, Ohio, against Keller and Simmons and others, asserting that the operation of the shooting range constituted an unlawful nuisance and claiming further a loss of the quiet enjoyment of their property. (*Id.* at ¶ 14.) This state court litigation remains pending and presents an appropriate forum for the resolution of Plaintiffs' claims.

Plaintiffs further allege that in April 2001, the Butler County Board of Zoning Appeals ("the BZA") found that Keller and Simmons were in violation of county zoning resolutions. (*Id.* at 15.) Nevertheless, on July 17, 2001 and February 23, 2003, the BZA approved conditional use permits to allow the shooting range to continue to operate. (*Id.* at 16.) [*p.-3-]

Although the BZA established conditions for the shooting range, including requiring a 300 foot buffer zone between the Plaintiffs' property and the range activities (*id.* at 35), Plaintiffs assert compellingly that

the BZA-imposed conditions are wholly insufficient to protect Plaintiffs and their property.

Plaintiffs accordingly appealed the decision of BZA to the Butler County Court of Common Pleas, which court remanded the matter to the BZA for further proceedings and ordered the BZA thereafter to submit written findings of fact to the Court of Common Pleas. (Doc. 19, Ex. 3.) On remand, the BZA heard additional testimony, and, following the hearing, the BZA filed "Conclusions of Fact" with the Court of Common Pleas.

On April 11, 2003, the Court of Common Pleas affirmed the BZA's decision. Plaintiffs appealed the decision of the Court of Common Pleas, and, on December 8, 2003, the Ohio Court of Appeals for the Twelfth District affirmed the decision of the Court of Common Pleas upholding the BZA's decision to grant a conditional use permit to operate the shooting range.

On May 4, 2005, Plaintiffs initiated the instant action.

Plaintiffs' principal claim in the instant action is that the Butler County Board of Zoning Appeals and the Ohio courts improperly approved a commercial shooting range to be operated adjacent to Plaintiffs' residence and tree farm. Thus, Plaintiffs' complaint asserts claims against the owners of the shooting range and their attorney, the Ohio Court of Appeals Judges who presided over Plaintiffs' appeal, various Butler County officials, [*p.-4-] and the Ohio Wildlife Division Chief.[3]

---

[3] The named defendants include: the operators of the commercial shooting range, Charles Keller, Christopher Keller, Michael Simmons, and Ridge Wind Quail Hunts, LLC, and their attorney, John B. Connaughton; the members of the Butler County Board of Zoning Appeals, Lee Steenken, Thomas Bevington, Gary Salman, John Zboril, Walt Filpot, and Alan Daniel; the Butler County Commissioners, Michael A. Fox, Gregory Jolivette, and Charles R. Furmon; and Judges of the Ohio Court of Appeals for the 12th Appellate

Plaintiffs are seeking compensatory damages, as well as declaratory and injunctive relief. Specifically, Plaintiffs' prayer for relief seeks the following:

> 1. Declaratory judgment establishing that the BZA approval of the subject shooting range was unlawful and unconstitutional and a permanent injunction against the BZA from permitting shooting range operations as conditional uses in the A-1 zone.
>
> 2. Permanent injunction against defendant Gray from permitting any shotgun shooting operations, public or private, including the subject shooting range;
>
> 3. A diligent and thorough investigation by the United States Attorney into corrupt practices within the Butler County Sheriff, Prosecutor, Judicial, and Executive departments;
>
> 4. Defendants pay Plaintiffs fair market value (prior to the shooting range) for residence and property, and assume all liability for lead contamination of Plaintiffs' property;
>
> 5. Money damages (incidental and punitive) in the amount of $10,000,000.
>
> 5.(sic) Any further relief the Court deems appropriate. (Doc. 1, p. 12.)

Defendants Valen, Young, Powell and Connaughton have filed a motion to dismiss (doc. 14), and Defendants Keller, Keller, Simmons, and Ridge Wind Quail Hunts, L.L.C. [*p.-5-] have filed a motion to dis-

---

District, the Honorable Anthony Valen, the Honorable William W. Young,, and the Honorable Steven W. Powell; Butler County Warrant Officer, Thomas Turner; Butler County Sheriff, Richard K. Jones; Butler County Chief Deputy Sheriff, Anthony E. Dwyer; Butler County Prosecuting Attorney, Robin Piper; Butler County Assistant Prosecuting Attorney, Roger Gates; Butler County Chief Zoning Inspector, William Balinsinger; Butler County Zoning Inspector, James M. Fox; and Ohio Department of Natural Resources Wildlife Division Chief, Steven A. Gray.

miss (doc. 19), and Defendant Steven A. Gray has filed a motion for judgment on the pleadings (doc. 25). The briefing of these motions is complete, and each motion will be addressed in turn.

II. STANDARDS OF REVIEW

A.

On consideration of a motion to dismiss under Rule 12(b)(1), the Court must take all material allegations in the complaint as true, and the Court shall construe all of the allegations in the light most favorable to the non-moving party. *See United States v. Ritchie,* 15 F.3d 592, 598 (6th Cir.), *cert. denied,* 513 U.S. 868 (1994).

Because Plaintiffs brings this case *pro se,* the Court liberally construes their allegations in their favor. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *see also Williams v. Browman*, 981 F.2d 901, 903 (6th Cir. 1992) (*pro se* pleadings should be construed more liberally than pleadings drafted by lawyers). Indeed, "[a] pro se plaintiff's complaint is held to an especially liberal standard, and should only be dismissed for failure to state a claim if it appears 'beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Herron v. Harrison*, 203 F.3d 410, 414 (6th Cir. 2000) (quoting in part *Estelle*, 429 U.S. at 106). The Court, however, "need not accept as true legal conclusions or unwarranted factual inferences." *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987).

Where subject matter jurisdiction is challenged pursuant to Rule 12(b)(1), the plaintiff has the burden of proving jurisdiction in order to survive the motion. *Moir v.*[*p.-6-] *Greater Cleveland Reg'l Trans. Auth.*, 895 F.2d 266, 269 (6th Cir. 1990). "[T]he court is empowered to resolve factual disputes when subject matter jurisdiction is challenged." *Rogers v. Stratton Industries, Inc.*, 798 F.2d 913, 918 (6th Cir. 1986). In resolving a factual jurisdictional issue under a Rule

12(b)(1) motion, the Court addresses the jurisdictional issue in the same manner as summary judgment issues, in that the moving party must demonstrate the absence of a genuine issue of jurisdictional fact. *Armbruster v. Quinn*, 711 F.2d 1332, 1335 (6th Cir. 1983); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

B.

Federal Rule of Civil Procedure 12(c) provides that "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Where, as here, a motion for judgment on the pleadings is based on the argument that the complaint fails to state claim upon which relief may be granted, the Rule 12(c) motion is judged under the same standard of review as a Rule 12(b)(6) motion. *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 11 (6th Cir. 1987). [*p.-7-]

III. ANALYSIS

A. Plaintiffs' Claims Under the Takings Clause Are Not Ripe And Should Be Dismissed Without Prejudice.

The central theme of Plaintiffs' complaint is that the approval and operation of the shooting range resulted in a taking of their property in violation of the Fifth Amendment. Their claim is essentially one of inverse condemnation.

However, all plaintiffs are required to first exhaust state administrative remedies for inverse condemnation, prior to filing a action under 42 U.S.C. § 1983. That is, "[i]f a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation." *Williamson County Regional Planning Commission v. Hamilton Bank of Johnston City,* 473 U.S. 172, 195 (1985); *see also*

Dawkins v. City of Utica, 1997 WL 176328, *7 (N.D.N.Y. 1997) ("As to plaintiff's takings claim, the court *sua sponte* conditionally dismisses that claim because it is not ripe.")

In *Williamson County,* the U.S. Supreme Court held that § 1983 claims based on alleged violations of the takings clause are not ripe until the plaintiff has either exhausted state law remedies for seeking just compensation for the alleged taking, or demonstrated that the state law procedures are inadequate. *Williamson County, supra,* 473 U.S. at 195; *see also Hammond v. Baldwin*, 866 F.2d 172, 179 (6th Cir. 1989) ("The plaintiffs have a state remedy to address the alleged damage to their property; and a suit under 42 U.S.C. § [*p.-8-] 1983 is inappropriate until a final decision of the state in an inverse condemnation action is entered against the plaintiffs.").

Because the Plaintiffs have not availed themselves of state-provided remedies by pursuing and completing a state court action seeking just compensation for the alleged inverse condemnation of their property, their instant action for claims of an unconstitutional takings is not yet ripe for adjudication. *Cap'n Hook Auto Parts Inc., v. Liverpool Township*, 773 F.Supp. 71, 74 (N.D. Ohio 1991); *Williamson,* 473 U.S. at 195.

Moreover, "[i]**f a claim is unripe, federal courts lack subject matter jurisdiction and the complaint must be dismissed. This deficiency may be raised sua sponte if not raised by the parties.**" *Bigelow v. Michigan Dept. of Natural Resources*, 970 F.2d 154, 157 (6th Cir. 1992) (quoting *Southern Pac. Transp. Co. v. City of Los Angeles*, 922 F.2d 498, 502 (9th Cir. 1990)) (emphasis supplied).

Accordingly, Plaintiffs' Fifth Amendment takings claims should be dismissed *sua sponte* without prejudice.

B. The Motion to Dismiss of Judges Anthony Valen, William Young, and Stephen Powell, and Attorney John B. Connaughton (Doc. 14) Should Be Granted.

Defendants Valen, Young and Powell, Judges of the Ohio Court of Appeals for the 12th Appellate District, presided over Plaintiffs' appeal of the decisions of the BZA and the Court of Common Pleas. [*p.-9-]

Plaintiffs allege that as a result of the proceedings before the Twelfth District Court of Appeals, the Judges violated the Plaintiffs' rights under the First, Fifth, and Fourteenth Amendments. Plaintiffs further allege that the Judges are all senior members of the Republican Party, that the zoning appeal "was effectively a political, rather than judicial, proceeding," that the Judges acted outside their judicial capacity, and that "the decision of the Judges places them in direct violation of Ohio Revised Code pertaining to firearms discharge."

As to Defendant Connaughton, Plaintiffs allege that his illegal conduct has resulted in the deprivation of Plaintiffs' First and Fifth Amendment rights. (*Id.* at ¶ 19.) Connaughton is a part-time county judge and a practicing attorney. Connaughton acted as an attorney for the shooting range operators during the zoning proceedings before the BZA. (Doc. 1, ¶ 16.) Plaintiffs allege, *inter alia*, that by acting as an attorney while at the same time serving as a part-time Ohio county judge, Connaughton breached an ethical of duty imposed by the Ohio Revised Code, the Code of Judicial Conduct, and Ohio's Code of Professional Responsibility. Plaintiffs further assert that Connaughton repeatedly perjured himself before the BZA, and made false statements to the common pleas and appellate courts. (*Id.* at ¶ 17.) Additionally, Plaintiffs assert that Con-

naughton witnessed his clients shoot maliciously into Plaintiffs' property. [*p.-10-]

i. Under the Rooker-Feldman Doctrine, the Court Lacks Jurisdiction over Plaintiffs' Claims Against the Defendant Judges and John Connaughton.

Under 28 U.S.C. § 1257, final judgments of state courts are entitled to receive full faith and credit from this Court, and the subordinate federal courts do not have jurisdiction to review these final judgments of state courts because the review of such determinations can be obtained only by the United States Supreme Court by writ of certiorari. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-416 (1923) (an appeal through the state courts to the U.S. Supreme Court is the exclusive means by which a state court judgment may be reviewed for constitutional error); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476, 483-84 n.6 (1983). As noted in *Feldman*:

> Lower federal courts possess no power whatever to sit in direct review of state court decisions. If the constitutional claims presented to a United States District Court are inextricably intertwined with the state court's denial [of the claim] in a judicial proceeding. . . then the district court is in essence being called on to review the state court decision. This the district court may not do.

Feldman, 460 U.S. at 483-84 n.6.

Thus, pursuant to the *Rooker-Feldman* doctrine, district courts lack jurisdiction over challenges to the constitutionality of judicial acts in the courts of the several states.

Here, Plaintiffs are seeking a declaratory judgment setting aside the state courts' [*p.-11-] decisions

regarding the zoning of the shooting range. Such action is expressly prohibited by the *Rooker-Feldman* doctrine, and, as a result, this Court lacks subject matter jurisdiction over Plaintiffs' claims.

ii. Defendant Judges Have Absolute Immunity Barring Plaintiffs' Claims for Monetary Relief.

Furthermore, the defendant Judges are absolutely immune from individual liability for monetary relief for the performance of any "judicial act" unless there is a "clear absence of all jurisdiction." *Stump v. Sparkman*, 435 U S. 349, 362 (1978); *King v. Love*, 766 F.2d 962, 966-67 (6th Cir. 1985). Judicial immunity is properly invoked unless a judge "knows he lacks jurisdiction or acts in the face of clearly valid statutes or case law expressly depriving him of jurisdiction." *Rankin v. Howard*, 633 F.2d 844 (9th Cir. 1980).

In examining the functions normally performed by a judge, the Court of Appeals for the Sixth Circuit has recognized that "paradigmatic judicial acts," or acts that involve resolving disputes between parties who have invoked the jurisdiction of a court, are the touchstone for application of judicial immunity. *Johnson v. Belskis*, 2005 WL 2416557, *8 (S.D. Ohio 2005) (citing *Barrett v. Harrington*, 130 F.3d 246, 255 (6th Cir.1997)).

Here, each of the judges acted in his judicial capacity with regard to the plaintiffs when presiding over the zoning appeal. The judges sat on a three-judge panel [*p.-12-] and ruled on Plaintiffs' appeal from the decision of the trial court (and the BZA). Moreover, Plaintiffs were parties in the zoning litigation and dealt with the judges in connection with that litigation. Thus, because presiding over cases is a function normally performed by a judge, and because Plaintiffs dealt with each of the judges in his judicial capacity,

the judges' acts were judicial in nature. Accordingly, Plaintiffs' claims against the judges are barred because the judges enjoy absolute immunity.

iii. Plaintiffs' Complaint Fails to State a Claim Against the Defendant Judges and Defendant Connaughton.

42 U.S.C. § 1983 provides a civil cause of action to any citizen of the United States against any person who, under color of state law, deprives the citizen of "any rights, privileges, or immunities secured by the Constitution and laws of the United States." *See Christy v. Randlett,* 932 F.2d 502, 504 (6th Cir.1991) (citations omitted).

Thus, to succeed on a § 1983 claim, a plaintiff must prove two elements: (1) that he was deprived of a right secured by the Federal Constitution or laws of the United States; and (2) that he was subjected to this deprivation by a person acting under the color of state law. *See Searcy v. City of Dayton,* 38 F.3d 282, 286 (6th Cir.1994). "By its terms, § 1983 creates no substantive rights; it merely provides remedies for deprivations of rights established elsewhere." *Gardenhire v. Schubert,* 205 F.3d 303, 310 (6th Cir.2000) (citing *Oklahoma v. Tuttle,* 471 U.S. 808 (1985)).

Here, Plaintiffs claim violations of various constitutional rights (*e.g.*, violations [*p.-13-] of the takings clause of the Fifth Amendment and violations of the due process clauses of the Fifth and Fourteenth Amendments). However, Plaintiffs do not allege that the Defendant Judges and/or Defendant Connaughton deprived Plaintiffs of a federally protected right.

As noted above, Plaintiffs allege that the Judges improperly decided the appeal of the decisions of the BZA and the Butler County Court of Common Pleas and that these rulings resulted in constitutional violations. Accordingly, Plaintiffs' claims against the Defendant Judges fail as a matter of law under § 1983

because such claims are barred on the basis of absolute judicial immunity. *See Johnson v. Belskis*, 2005 WL 2416557, *7 (S.D. Ohio 2005).

Furthermore, with respect to defendant Connaughton, Plaintiffs assert that he breached his ethical duty imposed by the Ohio Revised Code, the Ohio Code of Judicial Conduct, and the Ohio Code of Professional Responsibility by acting as an attorney while at the same time serving part-time as an Ohio county judge. Plaintiffs do not allege that defendant Connaughton's conduct in representing the shooting range operators deprived Plaintiffs of a federally protected right. Moreover, Plaintiffs make no allegation that defendant Connaughton was acting under color of law when he was representing the shooting range operators.

Under Ohio law, defendant Connaughton did not act unlawfully by acting as an attorney during his term as a part-time Ohio county judge. Pursuant to the Ohio [*p.-14-] Revised Code:

> A judge of a county court shall be disqualified from the practice of law only as to a matter pending or originating in that county court during the judge's term or office. ...

Ohio Rev. Code. Ann. § 1907.16 (B).

Additionally, Plaintiffs' allegations relating to defendant Connaughton's actions cannot result in civil liability under the Ohio Code of Judicial Conduct or the Ohio Code of Professional Responsibility. *See Code of Judicial Conduct Preamble* ("[The Judicial Code] is not designed or intended as a basis for civil liability or criminal prosecution."); *see also Fred Siegel Co., v. Arter & Hadden*, 85 Ohio St.3d 171 (1999) (a violation of the disciplinary rules does not, in itself, create a private cause of action.).

In any event, the allegations in Plaintiffs' complaint fail to establish that defendant Connaughton

was acting under color of law and/or that he deprived Plaintiffs of a federal right.

Accordingly, Plaintiffs' claims against the defendant Judges and attorney Connaughton should be dismissed.

C. The Motion to Dismiss of Defendants Keller, Keller, Simmons and Ridge Wind Quail Hunts, LLC (Doc. 19) Should Be Granted.

Plaintiffs' complaint alleges that the operation of a bird hunting business by defendants Keller, Keller, Simmons, and Ridge Wind Quail Hunts, L.L.C. (hereinafter the "Ridge Wind Defendants") amounted to a Fifth Amendment taking and deprived [*p.-15-] Plaintiffs of their property. Plaintiffs' further assert that the Ridge Wind Defendants and others conspired to deny Plaintiffs their due process rights under 42 U.S.C. § 1983.

i. *Rooker- Feldman*

As noted above, the *Rooker-Feldman* doctrine "bars re-litigation of claims raised in state court proceedings as well as claims that are 'inextricably intertwined' with the claims asserts there." *Pieper v. Am. Arbitration Ass'n*, 336 F.3d 458, 460 (6th Cir. 2003). Moreover, "[w]here federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive that the federal proceeding is, in substance, anything other than a prohibited appeal of the state-court judgment." *Catz v. Chalker*, 142 F.3d 279, 293 (6th Cir. 1998).

Here, Plaintiffs' complaint is seeking a "declaratory judgment establishing that the BZA approval of the shooting range and Judge Stapelton's ruling in support of the BZA were unlawful and unconstitutional." (Doc. 1 at ¶ 59.) However, the Ohio Court of Appeals for the Twelfth District affirmed the decision

granting the Ridge Wind Defendants a conditional use permit, and, accordingly, the *Rooker-Feldman* doctrine bars this Court from re-litigating the decision reached by the Ohio Court of Appeals.

ii. *Plaintiffs' Complaint Fails to State a Claim for Conspiracy under 42 U.S.C § 1983.*

Plaintiffs assert that *Rooker-Feldman* is inapplicable because the state appellate court did not address the issue of whether the Ridge Wind Defendants were damaging Plaintiffs' property and depriving them of civil rights. However, even assuming that [*p.-16-] *Rooker-Feldman* does not preclude this Court from exercising jurisdiction, dismissal under 12(b)(6) is still warranted because the Ridge Wind Defendants are not state actors and the complaint fails to state a claim for conspiracy under 42 U.S.C. § 1983.

As noted above, in order to establish liability under 42 U.S.C. § 1983, the Plaintiffs must prove that they were deprived of rights secured by the Constitution by a person acting under color of state law. *See Searcy, supra,* 38 F.3d at 286. "The principal inquiry in determining whether a private party's actions constitute state action under the Fourteenth Amendment is whether the party's actions may be fairly attributable to the state." *Wolotsky v. Huhn,* 960 F.2d 1331, 1335 (6th Cir. 1992). Here, it is undisputed that the Ridge Wind Defendants are not state actors.

However, Plaintiffs further assert that the Ridge Wind Defendants conspired with "others" to deny Plaintiffs their due process rights.

Private persons may be held liable under § 1983 if they willfully participate in a joint action with state agents. *Dennis v. Sparks*, 449 U.S. 24, 27-28 (1980); *Cooper v. Parrish*, 203 F.3d 937, 952 n.2 (6th Cir.2000); *Moore v. City of Paducah*, 890 F.2d 831, 834

(6th Cir.1989); *Hooks v. Hooks*, 771 F.2d 935, 943 (6th Cir.1985).

However, a complaint alleging that a private party is liable under § 1983 for conspiracy with a state actor "must be pled with some degree of specificity.... [V]ague and conclusory allegations unsupported by material facts will not be sufficient to state such a claim under § 1983." *Gutierrez v. Lynch*, 826 F.2d 1534, 1538 (6th Cir.1987).

The Sixth Circuit has repeatedly held that "general" allegations of a conspiracy [*p.-17-] are insufficient to withstand a motion to dismiss. Recently, the Sixth Circuit dismissed a claim raising allegations similar to those in Plaintiffs' complaint:

> Plaintiffs have not asserted any facts to show that his conduct can be characterized as fairly attributable to the state under any of the tests articulated in *Tennessee Area Local,* 361 F.3d at 905. Nor have they alleged any specific facts to show that [the defendant's] involvement in the civil litigation and the criminal prosecution of [the plaintiff] was a cooperative or joint effort with state actors to deprive Plaintiffs of their civil rights. Other than general allegations of conspiracy to cause and influence a wrongful criminal prosecution, Plaintiffs make no allegations of joint, concerted activity to deprive Dallas of his civil rights.

Dallas v. Holmes, 2005 WL 1313801, at *5 (6th Cir. 2005).

Thus, simply stating in the complaint that a conspiracy was present is not enough to survive a Rule 12(b)(6) motion. *See, e.g., Spadafore v. Gardner*, 330 F.3d 849, 853 (6th Cir. 2003) (dismissing complaint because it lacked "the requisite degree of specificity"); *Morris v. Boyd*, 39 Fed. Appx. 281, 283-84 (6th Cir. 2002) (dismissing claim alleging conspiracy between

police officer and social worker who each allegedly gave false testimony, as plaintiff had not alleged an agreement between the two to do so); *Young v. Gundy*, 30 Fed. Appx. 568, 569 (6th Cir. 2002) (dismissing complaint where it contained only a "bare assertion of a conspiracy" but lacked factual support for such an assertion); *Mich. Paytel Joint Venture v. City of Detroit*, 287 F.3d 527, 541 (6th Cir. 2002) (dismissing deficient complaint because "vague and conclusory allegations unsupported by material facts are insufficient to sustain a conspiracy claim under § 1983").

Here, Plaintiffs' complaint contains vague and conclusory allegations implying [*p.-18-] that a conspiracy existed. Moreover, Plaintiffs have not alleged any agreement and/or a joint concerted effort between the Ridge Wind Defendants and any state actor to deprive Plaintiffs of their civil rights. *Cf.* Doc. 1 ¶¶ 34 & 47.

Accordingly, Plaintiffs' conspiracy allegations are properly dismissed.

iii. Plaintiffs Cannot State a Claim for Failure of State Officials to Prosecute the Ridge Wind Defendants.

In their memorandum *contra* to the Ridge Wind Defendants' motion to dismiss, Plaintiffs argue that their due process rights were violated by the failure of state officials to prosecute the Ridge Wind Defendants. (Doc. 27, p. 11). However, the Fourteenth Amendment does not provide the right to have another individual prosecuted. *See Town of Castle Rock v. Gonzales*, 125 S.Ct. 2796, 2810 (2005) ("the benefit that a third party may receive from having someone else arrested . . . generally does not trigger protections under the Due Process Clause.")

Accordingly, Plaintiffs' allegations against the Ridge Wind Defendants fail to state a claim upon

which relief can be granted, and the Ridge Wind Defendants' motion to dismiss should be granted. [*p.-19-]

D. The Motion for Judgment on the Pleadings of Defendant Steven A. Gray (Doc. 25) Should Be Granted.

Plaintiffs' complaint alleges that defendant Gray, as Chief of the Division of Wildlife of the Ohio Department of Natural Resources, issued various permits to the Ridge Wind Defendants with "no provision for public comment or any regard for the public safety, and are in accordance with neither State Law nor the chief's own regulations for safe operation." (Doc. 1 ¶ 49.)

Plaintiffs further allege that defendant Gray has "wrongfully failed to meaningfully investigate the range, correct any of the problems, or in any require the range to come into compliance with its own departments' regulations of State law." (*Id.* at ¶ 52.) Thus, Plaintiffs' contention is that defendant Gray's issuance of permits and licenses violated their Fourteenth Amendment Due Process rights and resulted in an unlawful taking in violation of the Fifth Amendment. (*Id.* at ¶ 53.)

Here, the crux of the allegations against Defendant Gray is that his actions resulted in an unlawful taking of Plaintiffs' property. However, as noted above, because a violation of the takings clause does not occur until just compensation has been denied, *see Williamson County,* 473 U.S. at 194 n.13, Plaintiffs must use available state procedures to seek such compensation before they may bring a § 1983 takings claim in federal court. *John Corp. v. City of Houston,* 214 F.3d 573, 581 (5th Cir. 2000).

Moreover, although Plaintiffs also allege substantive and procedural due process [*p.-20-] violations,

these claims are ancillary to the main issue (whether the granting of the permits and licenses constitutes a taking of the property) and, therefore, are not ripe for review at this time. *See Bigelow v. Michigan Dep't of Natural Resources*, 970 F.2d 154, 160 (6th Cir.1992) ("Until the state courts have ruled on the plaintiffs' inverse condemnation claim, this court cannot determine whether a taking has occurred, and thus cannot address the procedural due process claim with a full understanding of the relevant facts.").

Accordingly, defendant Gray's motion for judgment on the pleadings (doc. 25) should be granted.

IV.

Based on the foregoing, the undersigned **RECOMMENDS** that defendants' motions to dismiss (docs. 14 and 19) and for judgment on the pleadings (doc. 25) should be **GRANTED**; and defendants Anthony Valen, William Young, Stephen Powell, John Connaughton, Charles Keller, Christopher Keller, Michael Simmons, Ridge Wind Quail Hunts, LLC, and Steven A. Gray should be **TERMINATED** as party defendants in this action.

Moreover, although defendants Steeken, Bevington, Salman, Turner, Gates, Balsinger, J. Fox, Zboril, Filpot, Daniel, M. Fox, Jolivette, Furmon, Dwyer, Jones, and Piper have not sought dismissal of the complaint, it is manifest that Plaintiffs' Fifth Amendment takings claims, and the ancillary procedural and substantive due process claims, and the conspiracy claims must fail for the same reasons that they cannot [*p.-21-] succeed against defendants Anthony Valen, William Young, Stephen Powell, John Connaughton, Charles Keller, Christopher Keller, Michael Simmons, Ridge Wind Quail Hunts, LLC, and Steven A. Gray (*i.e.*, Plaintiffs' takings claims are not ripe for adjudica-

tion, *see Williamson County*, and Plaintiffs' conspiracy allegations lack specificity, *see Spadafore).*

Under these circumstances, "[a] District Court may properly on its own motion dismiss an action as to defendants who have not moved to dismiss where such defendants are in a position similar to that of the moving defendants." *Silverton v. Department of the Treasury*, 644 F.2d 1341, 1345 (9th Cir. 1981); *see also Muhammad v. State of Louisiana*, 2000 WL 1511181, at *4, 6 (E.D. La. Oct. 6, 2000); *Lesher v. Lavrich*, 632 F.Supp. 77, 84 (N.D. Ohio 1984) (citing *Silverton*).

IT IS THEREFORE FURTHER RECOMMENDED THAT the complaint be **DISMISSED** for failure to state a claim upon which relief can be granted and that the action be **TERMINATED** in toto.

In sum, the undersigned **RECOMMENDS THAT**:

1. The Motion to Dismiss of Judges Anthony Valen, William Young, and Stephen Powell, and Attorney John B. Connaughton (doc. 14) be **GRANTED**;
2. The Motion to Dismiss of Defendants Keller, Keller, Simmons and Ridge Wind Quail Hunts, LLC (doc. 19) be **GRANTED**; [*p. -22-]
3. The Motion for Judgment on the Pleadings of Defendant Gray (doc. 25) be **GRANTED**;
4. Plaintiff's Fifth Amendment takings claims, and all ancillary claims thereto, be **DISMISSED *without prejudice***; and
5. All pending motions be **DENIED as MOOT**, and this matter **CLOSED**.

DATE: December 29, 2005

s/ Timothy S. Black
United States
Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Michael Hanning Loriz; *et al.*,	)	FILED
	)	MAY 4 2005
Plaintiffs,	)	
	)	
vs.	)	Case No.
	)	1:06-cv-306
John B. Connaughton, *et al.*,[4]	)	
	)	
Defendants.	)	

[4] The Hon. John B. Connaughton, individually; Charles Keller, individually; Christopher Keller, individually; Michael Simmons, individually; Ridge Wind Quail Hunts, Llc; Lee Steenken, individually and in her official capacity as Butler County (Ohio) Board of Zoning Appeals member and former President; Thomas Bevington, individually and in his official capacity as Butler County (Ohio) Board of Zoning Appeals member; Gary Salman, individually and in his official capacity as Butler County (Ohio) Board of Zoning Appeals member and current President; John Zboril, Individually; Walt Filpot, in his official capacity as Butler County (Ohio) Board of Zoning Appeals member; Alan Daniel, in his official capacity as Butler County (Ohio) Board of Zoning Appeals member; Michael A. Fox, in his official capacity as Butler County (Ohio) Commissioner; Gregory V. Jolivette, in his official capacity as Butler County (Ohio) Commissioner; Charles R. Furmon, in his official capacity as Butler County (Ohio) Commissioner; The Hon. Anthony Valen, individually and in his official capacity as 12th appellate district (Ohio) Court of Appeals Judge; The Hon. William W. Young, individually and in his official capacity as 12th appellate district (Ohio) Court of Appeals Judge; The Hon. Stephen W. Powell, individually and in his official capacity as 12th appellate district (Ohio) Court of Appeals Judge; Thomas Turner, individually and in his official capacity as Warrant Officer, Area I Court, Butler County, Ohio; Richard K. Jones, in his official capacity as Sheriff, Butler County, Ohio; Anthony E. Dwyer, in his official capacity as Chief Deputy, Butler County, Ohio; Robin Piper, individually and in his official capacity as Prosecuting Attorney, Butler County, Ohio; Roger Gates, individually and in his official capacity as As-

1. Plaintiffs are residents of Suffolk County, New York. Prior to June 16, 2003, plaintiffs were residents of Butler County, Ohio. The actions of others, including DEFENDANTS, HAVE FORCED PLAINTIFFS TO VACATE PLAINTIFF'S OHIO RESIDENCE AND RESIDENCY, AGAINST PLAINTIFFS' LAWFUL DESIRE AND RIGHT. Incidents described hereinafter, and the claims arising from them, occurred before AND after June 16, 2003, are ongoing, and constitute a continuous tort.

2. Defendants Connaughton, *et al.*, are residents of Ohio, with the possible exception of defendant Christopher Keller, whose state of residence is unknown at this time.

3. The jurisdiction of this court is invoked pursuant to Article III § 2 and pursuant to Title 18 U.S. Code § 241 and § 242, Title 28 U.S. Code § 1331 and § 1332, and Title 42 U.S. Code § 1983 for violations of 1st, 5th and 14th Amendments.

4. On March 31, 2004, plaintiffs filed a complaint against Connaughton *et al* in United States District Court, Eastern District of New York. The case was docketed in the Court of Hon. Sandra J. Feuerstein as case CV 04 1331. Defendant Steven A. Gray moved to dismiss the complaint for improper venue pursuant to Rule 12(b) (3) of the FRCP. Defendant Thomas Turner, Roger Gates, James M. Fox, William E. Balsinger, Lee Steenken, Thomas Bevington, and Gary Salman sought to transfer venue to the Southern District of

---

sistant Prosecuting Attorney (Civil), Butler County, Ohio; William E. Balsinger, individually and in his official capacity as Chief Zoning Inspector of Butler County, Ohio; James M. Fox, individually and in his official capacity as Zoning Inspector of Butler County, Ohio; Steven A. Gray, individually and in his official capacity as Wildlife Division Chief, Ohio Department of Natural Resources.

Ohio pursuant to 28 U.S.C. § 1404(a) or § 1406(a). Defendants Hon. Anthony Valen, Hon. William Young, Hon. Stephen W. Powell, and John B. Connaughton moved to dismiss for lack of subject matter and personal jurisdiction pursuant to FRCP 12(b)(1) and 12(b)(2), respectively, and for failure to state a claim upon which relief can be granted pursuant to FRCP 12(b)(6). In her Opinion and Order dated March 17, 2005, and received by U.S. mail by plaintiffs March 21, 2005, Judge Feuerstein granted Defendant Gray's motion to dismiss for improper venue, and denied the remaining motions as moot. The instant complaint is an amended version of the original complaint.

5. In 1995, following a company transfer, plaintiffs purchased a 45 acre farm in Butler County, Ohio. Plaintiffs built a 5000+ square foot custom home, barn, and large shed. Subsequently, parents of plaintiff Michael Loriz purchased a 5 acre lot adjacent to plaintiff's property, and built their retirement home.

6. During early construction of the house in 1995, Defendants Charles Keller and Michael Simmons visited plaintiff Michael Loriz, and informed plaintiff that they had applied for a zoning variance in order to operate a commercial bird hunting operation on the property adjacent to plaintiffs, which was owned by Defendants Charles and Christopher Keller. Defendants desired plaintiffs to support this variance request.

7. Plaintiff Michael Loriz immediately called the then Butler County Zoning Administrator, Steve Soltis, who confirmed the variance application. Mr. Soltis indicated that he was of the opinion that the variance was not likely to be approved due to safety and neighborhood concerns. A call to Marilyn Combs, the realtor who had just sold the property to the plaintiffs, confirmed that

there was overwhelming neighborhood opposition to the shooting range (including an opposing petition with approximately 200 names), and did not think it would be approved in the existing neighborhood.

8. Defendants Charles Keller and Michael Simmons reappeared the following day, and plaintiff Michael Loriz relayed the information gleaned. Defendant Charles Keller flew into a rage, and Plaintiff Michael Loriz asked him to leave the property. Wishing to avoid a nasty neighborhood argument, Plaintiff Michael Loriz offered to refund Defendant Simmons his application fee if Simmons would withdraw the variance request and cease efforts to establish a shooting range adjacent to the plaintiffs' property. Defendant Simmons agreed, and the variance request was withdrawn after plaintiff Michael Loriz wrote the $300.00 check to Defendant Simmons on the spot.

9. Plaintiffs finished building the house, barn, and large shed. Plaintiffs continued to develop their farm in the manner they felt most appropriate for the soil and terrain. After consulting with the Ohio Division of Natural Resources, plaintiffs applied for and were accepted into the Ohio Stewardship Incentive Program, which provided limited cost sharing for reforestation and existing timber stand improvement. During the period 1998-2000, plaintiffs spent thousands of hours and tens of thousands of dollars reforesting, thinning, buying equipment, and incorporating. Plaintiffs transformed the 2000+ square foot basement beneath the 5000+ square foot house into a semi-professional woodworking shop. Plaintiffs' plan was to establish a high value ($2 million per acre) hardwood veneer tree farm, and put the property into trust for plaintiffs' descendants.

10. During this same period, plaintiffs also had much illegal firearm use on and into plaintiffs' property. Af-

ter several reports by Butler County Sheriff personnel, plaintiff Michael Loriz addressed defendants Fox and Furman at a County Commission meeting. The only assistance these defendants could offer was for plaintiffs to file a civil complaint against the shooters.

11. In January 2001, hell broke loose next to plaintiffs' house. Weekends brought dozens of shotgun-shooting gentlemen to the fields adjacent to plaintiffs' house, farm, and, in at least one case, on plaintiff's backyard. Plaintiff Cara Loriz discovered internet advertising for the shooting range operations, and plaintiffs discovered that the State of Ohio Division of Wildlife had approved various applications from defendants Charles Keller and Michael Simmons. When defendant Gray's representative, Butler County game warden Mike Custer, was asked by plaintiffs how the State could approve such a level of firearms use 300 feet from a residence, he sheepishly replied that they had not known that our house was there. The Butler County Zoning Department subsequently issued a notice of zoning violation to defendant Charles Keller and an order to discontinue, cease, and desist this violation. Defendant Keller refused to do so.

12. In March 2001, the Butler County Zoning Department requested that Judge Keith Spaeth issue a temporary restraining order against the shooting range. In the lobby outside the courtroom, plaintiffs' first attorney, when he saw that defendant John Connaughton (who is also an Area Court Judge in Butler County) would be opposing counsel, put his head in his hands and said "Oh, no". This response was prescient, as Judge Spaeth decided (immediately following a discussion in chambers to which plaintiffs were not invited) that the rights of dozens of shooters, many from out of state, to shoot into plaintiffs' backyard took precedence over plaintiff's right to safely live in their house. Dur-

ing this event, as well as during prior events, plaintiffs generally evacuated their house during the shooting operations due to projectile hazard and extremely high noise levels.

13. Prior to the start of the March event, knowing that it was not in compliance with the applicable zoning resolution, plaintiff Michael Loriz videotaped the shooters as they entered the driveway. This was done with the knowledge and approval of plaintiffs' attorney, and was done from public property. At least one of the shooters was not happy about being videotaped, as one of them went to plaintiffs' fence and shot three times toward plaintiffs' house, in an extremely threatening manner, shortly after the videotaping was finished.

14. In March 2001, plaintiffs filed a civil complaint in the Ohio Common Pleas Court against several defendants for nuisance and loss of quiet enjoyment. In the intervening period, however, the damage done to plaintiffs' by defendants Charles and Christopher Keller and Michael Simmons have risen to the level of a 5th Amendment taking. These defendants, and or their clients, have repeatedly shot at plaintiff Michael Loriz, have routinely shot into plaintiffs' property, and have forced plaintiffs to vacate their property. Depositions indicate that defendant Charles Keller threatened neighbors in an attempt to coerce them into supporting the shooting range. Defendants Charles and Christopher Keller built very large deer shooting stands (multi-story, approximately 25 feet tall) approximately 150 feet from plaintiffs' fence and set up a deer feeder approximately 75 feet from plaintiffs' property, approximately 300 feet from plaintiffs' house. Shots taken from the deer stand are taken toward the deer feeder, with plaintiffs' house behind the deer feeder. The ballistic range of the shotgun slugs used for deer hunting is 1200 to 3000 feet, and the ricochet range of

that same ammunition is approximately 800 feet, putting anyone outside plaintiffs' house in serious and grave danger. While in or near the deer stand, defendant Charles Keller, evidently unhappy that plaintiff Michael Loriz was cutting invasive growth on plaintiff's own property, shot over plaintiff's head while plaintiff was on his own property. These defendants' actions appear to have been malicious, reckless, wanton, and in complete disregard for plaintiffs' rights to use their own property in any manner, including those specifically permitted by zoning resolution. These defendants, allied with the government defendants, have effectively, wrongfully, and unlawfully taken plaintiffs property, in direct violation of the 5th Amendment.

15. In April 2001, the Butler County Board of Zoning Appeals ('BZA'), including Defendants Lee Steenken, Thomas Bevington, John Zboril, Alan Daniel, and Gary Salman, unanimously found defendants Charles Keller and Michael Simmons to be in violation of the zoning resolution. (The BZA defendants were appointed by and or represent the Butler County Commissioner Defendants Michael A. Fox, Gregory V. Jolivette, and Charles R. Furmon).

16. On July 17, 2001, and February 19, 2003, the BZA approved a conditional use permit to allow a commercial shooting range to be opened adjacent to plaintiffs' residence and tree farm in Butler County, Ohio. These Defendants approved the range despite the fact that a conditional use was not allowed by the zoning resolution for this operation; and despite testimony from a neighbor that on at least one prior shooting event there were large numbers of hunters trespassing onto plaintiffs property, that plaintiffs' property was rendered worthless by expert testimony, or that the range was completely out of compliance with NRA standard for safe operation. The range operators were repre-

sented before the BZA by Defendant Hon. John B. Connaughton. Mr. Connaughton's appearances, testimony, and conduct before the BZA were prohibited by the Ohio Code of Judicial Conduct, Ohio Revised Code, and the Ohio Code of Professional Responsibility.

17. Judge Connaughton attempted to void, with some success, the petitions to the BZA signed by more than 50 area residents, including plaintiffs, opposed to the approval of the range. Defendant Connaughton repeatedly perjured himself before the BZA, and made false statements to the Common Pleas and the Appellate courts. The only substantial testimony presented on behalf of the shooting range has been the testimony of Mr. Connaughton, which he later stated was the functional equivalent of sworn testimony.

18. On at least one occasion, Defendant Connaughton stood at plaintiffs' fence while same defendant's clients shot into plaintiffs' property. This intentional act, which was videotaped, was in violation of Ohio law. Following this act, defendant Connaughton suborned the testimony of one of the act's participants in order to attempt to rehabilitate himself. Mr. Connaughton also appears to have established a pattern of corruption with Defendant Prosecutor Gates in order to protect himself and his clients from criminal prosecution relating to this act.

19. Defendant Connaughton's illegal and or improper conduct has been inconsistent with his own oath of office (which, in part, specifies that he shall support the constitution of the U.S.); has been prohibited by the Code of Judicial Conduct (which also applies to acts taken outside judicial capacity);has been inconsistent with the attorney's Code of Professional Responsibility; was prohibited by Ohio Revised Code; appears to constitute a pattern of corruption; has been wanton and

reckless, and has resulted in deprivation of plaintiffs' 1st and 5th Amendment rights. Judicial immunity is not applicable to defendant Connaughton as he was not acting in a judicial capacity in any of these activities.

20. The BZA was given manufacturer's ballistic data indicating that the shot being used at the shooting range has a maximum ballistic range of approximately 900 feet. The BZA was also informed that the National Rifle Association ('NRA') establishes that a 900-1200 foot setback should be observed from all adjacent lot lines to ensure projectile containment within a given shotgun shooting range using this kind of ammunition.

21. The BZA devalued the petitions of over 50 neighborhood residents, including the plaintiffs, at the request of Defendant Connaughton, in violation of plaintiffs' 1st Amendment rights.

22. The BZA ordered a setback of only 100 to 300 feet to this range (using the erroneously cited code standard for a baseball field), resulting in a rain of lead onto plaintiffs' farm and a continuous violation of Ohio law. The lead has destroyed the value of plaintiffs' hardwood trees, contaminated plaintiffs' property with hazardous waste (lead), and forced permanent vacation of property by plaintiffs and family in order to avoid death or grievous physical injury from high-speed projectiles emanating from the shooting range and trespassing onto plaintiffs' property.

23. On one of the few occasions that plaintiffs walked in their backyard during the operation of the shooting range, plaintiff Michael Loriz watched two shooters track a rising bird, and one of the shooters fired three rounds at the bird, which was between the shooter and plaintiff. The shot hit the trees over plaintiff's head, on plaintiff's property. Attempts to prosecute the individuals were unsuccessful. This event, coupled with

the inability and or unwillingness of the Butler County Sheriff department (represented by defendants Sheriff Jones, his predecessor, or Chief Deputy Dywer) or the Butler County Prosecutor's office (represented by defendants Piper, Gates, or Turner) to stop people from shooting firearms at plaintiffs, made it clear to plaintiffs that the routine use of their property was unsafe.

24. Plaintiff Michael Loriz made repeated attempts before the BZA at subsequent hearings to split the portion of the property which had not been damaged from the contaminated portion in order to salvage some value from the mess. The BZA repeatedly refused to grant these requests, even after the BZA put onerous restrictions on the plaintiff, such as building a 24 foot wide paved driveway to access a 17 foot wide county road. At one point the BZA even suggested that plaintiff leave a buffer at the back of plaintiffs' property in consideration of the shooting range, in itself suggestive of an illegal taking. In repeated acts of bad faith, defendant Balsinger encouraged plaintiff Michael Loriz to reapply for the split, at considerable cost and aggravation to plaintiff, with false assurances that the split would be approved. All other attempts to sell or salvage any value from the property have been completely unsuccessful, other than a recent offer of $100,000 from Defendant Connaughton for our property which had been appraised at $700,000 prior to the shooting range, not counting timber and reforestation value. A copy of this letter is attached. Plaintiffs suggest that this letter is clear evidence of the conspiracy among the various defendants to confiscate our property, in violation of plaintiffs' 5th and 14th amendment rights.

25. The actions of Defendants Steenken, Bevington, Daniel, Filpot, Zboril, and Salman have resulted in a taking of plaintiffs' property, without just compensation or due process, in violation of plaintiffs' 5th and 14th

amendment rights. Their actions appear to have been malicious, reckless, wanton, in bad faith, and in complete disregard for plaintiffs' rights to use their own property in any manner, including those specifically permitted by zoning resolution. Any limited immunity which attaches to these defendants has been stripped by the corrupt, reckless, and wanton manner in which they have acted. Plaintiffs note that BZA defendant Alan Daniel voted against the shooting range, was absent or otherwise did not vote; and defendant Walt Filpot was not yet on the BZA during any of the votes. However, these two BZA defendants are named in order to fully enjoin the BZA as a political subdivision. BZA defendant Zboril is no longer on the board; however, he was present and voted in favor of the range in July 2001.

26. At the July 2001 hearing during which the BZA conditionally approved the shooting range, one of the stipulations was that an annual hearing would occur before the BZA during which neighbors could voice concerns about the range and the BZA could add or remove restrictions as the monitoring of the operation (by the zoning staff and the BZA) warranted. The first such hearing did not occur until April 2004. As discussed in paragraph 53, at least one resident was not allowed to even speak at the hearing, and the BZA was utterly negligent in exercising any duty of care, much less the special duty of care suggested by their own stipulation of the annual review. Such negligence also strips the BZA defendants of their limited immunity.

27. Judge William Stapleton was assigned the case of the appeal of the BZA's decision as a visiting Judge in the Butler County Court of Common Pleas. At the time he was assigned to the case, Judge Stapleton was terminally ill with cancer.

28. At around this time, the original civil nuisance suit was joined with the appeal of the BZA's decision, without the plaintiffs' prior knowledge or opportunity to object. Also, defendants Michael Simmons and Charles Keller formed 'Ridge Wind Quail Hunts, LLC'.

29. Judge Stapleton found the BZA decision to be fatally flawed, but remanded the case back to the BZA in direct violation of Ohio law.

30. Documents filed by Judge Stapleton with the Supreme Court of Ohio indicate that during the time he was purportedly reviewing hundreds of pages of transcripts and evidence from the remand hearing in accordance with his lawful duties -- considering the facts of the case and writing his decision -- he billed zero time to the case. In addition, according to Butler County Court Clerk records, during this time those same files were checked out to another Judge in Butler County, thereby depriving both Judge Stapleton and plaintiffs the opportunity to study the case files.

31. Judge Stapleton also failed to report defendant Connaughton's improper appearance before the BZA to proper authority, as he is required to do by Judicial Canon.

32. Judge Stapleton's conduct has been inconsistent with his oath of office, has the appearance of being grossly negligent, and has resulted in deprivation of plaintiffs' 5th and 14th Amendment rights. Plaintiffs' attorney indicated that the Ohio Supreme Court was concerned about some of Judge Stapleton's decisions during this period of his failing health. However, plaintiffs have chosen not to file a claim against the estate of Judge Stapleton, as it would not be proper to burden his heirs with the results of his improper conduct a few months prior to his death.

33. On October 7th, 2003, the 12th Appellate District of the Court of Appeals of Ohio conducted a hearing regarding the case, with defendants Valen, Young, and Powell presiding.

34. Defendants Valen, Young, and Powell, as well as defendants Connaughton and Gates, share the upper echelons of the Butler County Republican Party membership hierarchy; and the judge's names, titles, and party affiliation levels are advertised on the worldwide web. Defendant Powell is a member of the Chairman's Club, and defendants Valen, Young, and Connaughton are Gold Elephants. Plaintiffs certainly acknowledge the rights of defendants to partake in the political process, including party membership (until two years ago, plaintiff Michael Loriz had been a lifelong Republican). However, circumstances force plaintiffs to assert that the hearing was effectively a political, rather than a judicial, proceeding. Plaintiffs assert that these affiliations and others to be discovered will demonstrate the various defendants' complicity in conspiring to unjustly protect and promote defendant Connaughton and his clients, thereby abridging and denying plaintiffs' Constitutional rights.

35. In response to a direct question from the Court to defendant Connaughton regarding the range of the projectiles emanating from the shotguns being used on the shooting range, Connaughton responded that the projectiles traveled 1100 feet. The Court was aware that by BZA order the shooting range operations are set back only 300 feet from plaintiffs' property, and the Court understood that defendant Connaughton was acknowledging that the shots were carrying as far as 800 feet into plaintiffs' property, in direct violation of Ohio firearm discharge law as well as plaintiff's 5th and 14th Amendment rights.

36. The 12th Appellate (Ohio) Court was informed of the lack of time billing to the Ohio Supreme Court by Judge Stapleton, documented by Ohio Supreme Court filings made by Judge Stapleton, by plaintiff's attorney. They failed to address this in their ruling or report it to the Disciplinary Counsel.

37. The 12th Appellate (Ohio) Court also failed to note and report the impropriety of Judge Connaughton's appearance and testimony before the BZA to proper authority, in violation of Ohio Judicial Canon. The Court further used Mr.Connaughton's prohibited testimony to support their affirmation of Judge Stapleton's ruling.

38. These failures, coupled with political relationships with defendants Connaughton and Gates outside these proceedings, suggest possible corruption on the part of the Appellate Court.

39. The 12th Appellate (Ohio) Court upheld false statements by defendants Gates and Connaughton regarding limitations on plaintiff Michael Loriz's testimony at the original BZA hearing. Plaintiff Michael Loriz was limited, as were all those in opposition to the shooting range, to five minutes to present evidence compared to several hours of testimony by Mr. Connaughton and his clients. The appellate court's upholding of false statements relating to Plaintiff's 1st and 14th Amendment rights in direct contradiction to the record is itself a violation of plaintiff's rights of government petition and due process.

40. On October 9, 2003, Judge Stapleton died.

41. The 12th Appellate (Ohio) Court's decision on December 8, 2003, upholding the range is inconsistent with their oath of office; appears to be wanton, reckless, and corrupt; and has resulted in the unlawful and

wrongful deprivation of plaintiffs' 1st, 5th and 14th Amendment rights. Furthermore, the Ohio legislature has reasonably indicated that it is unlawful to discharge a firearm into the property of another. By ruling that in this case, it IS lawful for the defendants to fire copious amounts of 12 gauge shotgun fire into plaintiffs' property, these defendants have effectively usurped the legislative role of the Ohio legislature. In essence, the function of the 12th Appellate Court in this case was legislative, not judicial, and as such, the conduct is not protected by judicial immunity.

42. By approving and upholding a commercial shooting range which was acknowledged by defendant Connaughton in their Court to be shooting lead up to 800 feet into plaintiffs' property, IN DIRECT VIOLATION of Ohio Revised Code pertaining to firearm discharge, defendants Stapleton, Valen, Young, and Powell have acted outside their judicial capacity, and have wrongfully and unlawfully deprived plaintiffs of their 1st, 5th, and 14th Amendment rights.

43. On December 10, 2001, defendant Thomas Turner, Butler County Warrant Officer, caused plaintiff Michael Loriz to be served with a summons of a complaint alleged by one of the shooting range's patrons, Kenneth Botzung. The Court dismissed the charge when it became aware that plaintiff Michael Loriz was in Costa Rica during the time of the alleged offense.

44. On May 28, 2002, in a case of malicious prosecution, defendant Turner again caused plaintiff Michael Loriz to be served with essentially the same summons, in direct violation of plaintiff's 5th Amendment protection against double jeopardy. This charge was dismissed in court after hearing only the accuser's insufficient evidence, but at great cost and distress to plaintiffs. The underlying incident is sworn to in an attached affidavit

by Joyce Franchini, a neighbor who witnessed the event. As described in the affidavit, plaintiff Michael Loriz was attempting to photograph a patron of the range who was outside the prescribed limits of the range. In an obvious act of intimidation, the range patron, at the apparent direction of defendant Charles Keller, was carrying a rifle past plaintiff Cara Loriz, who was gardening, and plaintiffs' then six-year-old daughter, who was playing on her swing set.

45. During this same time period, defendant Turner adamantly refused plaintiff Michael Loriz's requests to file charges against specific patrons of the shooting range for illegal firearm discharge or other violations, even with sworn testimony, videotape and photographic records, and prima facie evidence of damage and trespass. Defendant Turner's malfeasance and wanton conduct in assisting Botzung's obviously malicious prosecution attempt, and repeated refusal to allow plaintiffs to pursue criminal charges against people shooting at plaintiffs or into plaintiffs' property, is in violation of plaintiff's 14th Amendment guarantee of equal protection, and is not protected by his limited immunity.

46. The Butler County Zoning Inspectors, Defendants William Balsinger and James Fox, have recklessly and wantonly failed to enforce the Butler County Zoning Resolution from April 2001 through the present relating to, among many issues, lack of required Health department approval, stay of the shooting range operation during appeal, prohibition of commercial recreation in the A-1 zone, and fines for violations by Defendant Connaughton's clients. This selective enforcement in favor of a county judge's clients is a wrongful violation of plaintiffs' 14th Amendment guarantees of equal protection.

47. Defendant Roger Gates, Butler County Assistant Prosecutor (Civil) has been representing the BZA,

aligned with defendant Connaughton. (Defendant Gates is also an 'Early Bird' in the Butler County Republican party hierarchy). Plaintiff has been informed by Sheriff's department personnel and a junior prosecuting attorney that Defendant Gates actively inhibited and shut down a criminal investigation by the Butler County Sheriff's office of an incident involving defendant Connaughton and his client shooting into plaintiffs' property, reported to the Butler County Sheriff by plaintiff Michael Loriz. This information was confirmed by defendant Chief Deputy (Major) Anthony Dwyer (phone log attached). Such wanton obstruction of justice wrongfully abridges plaintiff's 14th Amendment guarantee of equal protection, and implies collusion, complicity, and or conspiracy with defendant Connaughton. Such activity is also outside his official capacity as a civil prosecutor.

48. Defendant Dwyer and Defendant Piper were aware that Detective Schultheiss was contacted by Civil Prosecutor Gates and another prosecutor in order to shut down the firearm discharge violation by Judge Connaughton and his client, yet failed to correct or otherwise seriously investigate the obviously improper and probably illegal interference by defendant Gates. Such failure constitutes a violation of plaintiffs'14th Amendment guarantee of equal protection, and implies collusion, complicity, and or conspiracy with defendant Connaughton.

49. From early 2001 through the present, defendant Steven A. Gray, chief of the Wildlife Division of the Ohio Department of Natural Resources, and his predecessor, issued numerous permits to defendant Connaughton's clients. These permits have been given with no provision for public comment or any regard for public safety, and are in accordance with neither State Law nor the chief's own regulations for safe operation. The first indications plaintiff had that the permits had been

granted was the presence of over 35 armed men shooting 12 gauge shotguns 300 feet from plaintiff's house, with the resulting rain of hundreds of rounds of shotgun fire and forced vacation of plaintiff's residence by plaintiffs to avoid risk of death or grievous physical injury from projectiles escaping the boundaries of the range. Defendant Gray's representative, Butler County game warden Mike Custer, admitted that the initial permits were granted with lack of knowledge of the proximity of plaintiffs' residence to the shooting operations. The failure by defendant Gray and the Division of Wildlife to conduct even the most cursory inspection prior to permitting dozens of visiting shooters to shoot thousands of rounds of twelve gauge shotgun fire as close as 300 feet from plaintiffs' house, with no regard to direction of shot, is reckless in the extreme. The reissuing of such permits under the now known circumstances is wanton.

50. The operation of the subject shooting range results in continuous violation of Ohio law.

51. Plaintiffs have repeatedly contacted defendant Gray and or members of his staff to inform him of the shot trespass and lack of noise suppression that have been associated with the activities on the Keller property which defendant Gray has permitted. Defendant Gray has wrongly failed to meaningfully investigate the range, correct any of the problems, or in any way require the range to come into compliance with his own departments' regulations or State law.

52. Defendant Gray's wrongful granting of these permits and licenses is a violation of plaintiffs' 14th Amendment due process rights, and has effectively resulted in unlawful taking of plaintiff's farm and residence in both a substantive and procedural sense, in violation of plaintiffs' 5th Amendment rights.

53. In April 2004 plaintiffs spent two days and considerable expense traveling to Butler County for the annual review hearing for the shooting range by the BZA. Prior to speaking to the board, plaintiff Michael Loriz was ordered out of the building by defendant Bevington, in violation of plaintiffs' statutory and constitutional rights, as well as Ohio civil rights law. Plaintiff was escorted from the premises by an armed deputy. Plaintiff complied with the request, although defendant Bevington was entirely without provocation or authority to issue that order. The incident report is attached. Defendant Prosecutor Piper was made aware that plaintiff Michael Loriz was ordered to leave the public hearing place prior to speaking, in gross violation of his 1st Amendment rights of free speech and petition, and refused to investigate the matter, in wrongful violation of plaintiff's 14th Amendment guarantee of equal protection. Such capricious and arbitrary conduct has stripped Prosecutor Piper of his immunity.

54. The last tree milled by plaintiff Michael Loriz from plaintiffs' property was a large walnut tree removed in a timber stand improvement approximately 250 feet behind plaintiffs' residence, approximately 75 feet from defendant Kellers' property, close to areas of heavy shooting since January 2001. After rough milling, stacking and drying the boards in sequence, final milling began (as the house and property were being frantically prepared for abandonment). The first board through the planer had lead shot in it, and the pile of walnut lumber turned into firewood. The matched, air-dried walnut from that tree, worth approximately $5000 retail, and representing over $100,000 in hand made wood strip kayaks which plaintiff Loriz makes, was ruined. The ten acres of tree seedlings have been almost completely lost.

55. Plaintiff Cara Loriz took a soil sample from the streambed behind the residence to her Miami university geology class, for her students to analyze. The sample included at least one lead pellet.

56. Parents of plaintiff Michael Loriz, whose house was not adjacent to the shooting range, sold their house and property at a substantial loss and relocated near their daughter in Oregon. Plaintiffs' children now see their grandparents a few times per year, instead of on a nearly daily basis as in the past.

57. More than four years after filing the State complaint referred to in paragraph 14, the action is not even through discovery. The improper influence of the various defendants, especially defendant Connaughton, has slowed the judicial process to less than a crawl. Such improper manipulation of the court system is also in violation of plaintiffs' 14th Amendment rights.

58. The results of the illegal and or improper actions of the various defendants include: Forced relocation of plaintiff and family to 900 square foot retirement house 800 miles distant; value of Ohio property decline from $700,000 to zero, according to appraiser, due to projectile threat and lead contamination; loss of over $150,000 in legal fees and expenses; loss of friends, pets, plaintiff Cara Loriz's job (including income and benefits), plaintiff's salvage logging business, future value of ten acres of hardwood veneer plantation; inability of plaintiff to adopt disadvantaged children, as had been planned; profound emotional distress requiring professional counseling for plaintiff, public humiliation from being forcibly removed from a public meeting without cause, and the imminent prospect of bankruptcy for plaintiff. The defendants have conspired to take plaintiffs' property and otherwise deprive plaintiffs of 1st, 5th, and 14th Amendment rights.

59. WHEREFORE, plaintiff demands:

Declaratory judgment establishing that the BZA approval of the subject shooting range and Judge Stapleton's ruling in support of the BZA were unlawful and unconstitutional. Permanent injunction against the BZA from permitting shooting range operations as conditional uses in the A-1 zone.

Permanent injunction against defendant Gray from permitting any shotgun shooting operations, public or private, including the subject shooting range, that are not in compliance with the National Rifle Association ballistic guidelines for setback from all lot lines, which provide basic protection against unconstitutional taking.

A diligent and thorough investigation by the United States Attorney into corrupt practices within the Butler County Sheriff, Prosecutor, Judicial, and Executive departments.

Defendants pay plaintiffs fair market value (prior to shooting range) for residence and property, and assume all liability for lead contamination of plaintiff's property.

Money damages (incidental and punitive) in the amount of $10,000,000.

Any further relief which the Court may deem appropriate.

Respectfully submitted,

s\Michael Hanning Loriz
s\Cara Francke Loriz
P.O. Box 923
Shelter Island, N.Y.
11964-0923
(631)749-1808

Amendment I
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment V
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV
Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

42 U.S. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.